ORDER ON COMPLAINT, ESTABLISHING HEARING AND SETTLEMENT JUDGE PROCEDURES, AND ACCEPTING REFUND REPORT

(issued September 14, 2018)

1. On October 10, 2017, American Electric Power Service Corporation (AEP) filed a complaint against Midcontinent Independent System Operator, Inc. (MISO), claiming that MISO had failed to provide AEP and other PJM Interconnection, L.L.C. (PJM) transmission owners with $2.9 million in SECA\(^1\) payments ($4.8 million including interest) under a mechanism designed to recover revenues lost due to the elimination of through-and-out rates in the MISO/PJM region. In this order, we grant in part and deny in part the complaint, establish hearing and settlement judge procedures, and set a refund effective date of October 10, 2017.

2. In addition, we accept a contested refund report filed by MISO and PJM in related SECA proceedings (Refund Report).

\(^{1}\) SECA stands for Seams Elimination Charge/Cost Adjustments/Assignments.
I. **AEP v. MISO Complaint**

A. **Background**

1. **General Overview of SECA Proceedings**

2. In the course of addressing the problem of rate pancaking across the MISO-PJM seam, the Commission found regional through-and-out rates to be unjust and unreasonable, adopted a license plate rate design for the MISO/PJM region, and instituted the SECA mechanism to serve as a reasonable transitional mechanism to mitigate abrupt cost shifts resulting from the replacement of rate pancaking with license plate rates.  

3. Later, the Commission ordered compliance filings to incorporate SECA as the transitional replacement rate, effective December 1, 2004 through March 31, 2006 (transition period). In a series of orders, the Commission accepted and set for hearing the initial and revised SECA implementation compliance filings. On May 21, 2010, the Commission issued an Order on Initial Decision in which it affirmed, in part, and reversed, in part, the Initial Decision. In August 2010, MISO submitted for inclusion in the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) revisions to Schedule 22, which sets forth sub-zonal SECA obligations and a method for collecting lost revenues of the PJM transmission owners, in compliance with the Order on Initial Decision.

4. In the September 2015 Order on Compliance, the Commission conditionally accepted, subject to a further compliance filing, the revisions to Schedule 22. In that order, the Commission also directed MISO and PJM to file refund reports within 90 days

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3 *Id.* P 8.


of the date of that order in accordance with the compliance filings accepted therein.\(^6\) Additionally, in that order, the Commission established a hearing to verify the identity of new suppliers to two loads. Subsequently, PJM and MISO requested, and were granted, an extension of time to file the Refund Report, until 180 days after issuance of a final order on the issues set for hearing. The hearing was resolved through a settlement agreement, which was filed in June 2016 and accepted by the Commission on December 21, 2016.\(^7\) On May 1, 2017, PJM and MISO requested an additional 90-day extension of time to submit the Refund Report. On September 18, 2017, MISO and PJM filed the Refund Report.

2. **SECA Charges under the MISO Tariff**

6. Pursuant to Schedule 22 of the MISO Tariff, MISO used North American Electric Reliability Corporation Open Access Technology International, Inc. electronic tag (e-tag) data to identify the transactions sourcing in PJM and sinking in each MISO sub-zone\(^8\) over the calendar year 2002-2003 test period that the PJM transmission owners used to derive their lost revenues. For example, if a transaction sourced in PJM and sank in a particular MISO sub-zone, the lost revenue responsibility associated with that transaction would be assigned to the Customer identified as responsible for serving that sub-zone. The charges for each sub-zone are set out as monthly dollar obligations shown on Attachment B of Schedule 22.\(^9\) Thus, a Customer identified as a sub-zone is responsible for paying the monthly SECA charges listed in Attachment B.

7. According to Schedule 22, any Customer that was not identified as a sub-zone is responsible for paying a SECA charge for any Network Integration Transmission Service or Point-to-Point Transmission Service for service sinking within MISO during the transition period. This “generally applicable” SECA charge is calculated for each MISO

\(^6\) *Id.* P 33.


\(^8\) Sub-zones are “Customers” responsible for sinks for which there is e-tag data showing lost revenue responsibility. Customers include “Transmission Customers as well as other entities in a zone that may not be Transmission Customers but which will bear responsibility for some SECA charges.” MISO Tariff, Schedule 22, Part I (General).

\(^9\) MISO Tariff, Schedule 22, Part II, Section A (Amounts Charged to Sub-Zones).
transmission pricing zone based on the average of all SECA amounts allocated to the applicable MISO transmission pricing zone.\textsuperscript{10}

8. Schedule 22 provides that the revenues from the generally applicable SECA charges “shall be used to provide payment to PJM transmission owners of the charges for sub-zones that have Customers responsible for payment that no longer exist or are no longer financially viable.”\textsuperscript{11} Schedule 22 also provides that, if in any month, the revenues derived from the generally applicable SECA charges are insufficient to provide full payment of the amount of the SECA obligation for each sub-zone for which a Customer responsible for payment no longer exists or is no longer financially viable, the generally applicable SECA revenues shall be allocated to each sub-zone that has Customers responsible for payment that no longer exist or are no longer financially viable, based upon the ratio of each such sub-zone’s unpaid monthly SECA obligation to the total unpaid monthly SECA obligation of the sub-zones listed in Attachment B to Schedule 22.\textsuperscript{12}

3. **AEP’s Complaint**

9. AEP submits that MISO failed to provide AEP and other PJM transmission owners with $2.9 million of SECA payments ($4.8 million including interest) designed to recover all of the revenues lost due to the elimination of through-and-out rates in the MISO/PJM region. AEP alleges that MISO failed to inform the Commission that the MISO sub-zones listed in Attachment B of Schedule 22 to the MISO Tariff included three load-serving entities (LSE) that were defunct during the transition period, and thus their allocated SECA charges could never be paid. Specifically, AEP alleges that the Refund Report revealed for the first time that MISO allocated SECA charges under Schedule 22 to three LSEs—Nicor Energy, L.L.C (Nicor), Engage Energy America LLC (Engage), and New Power Company (NPC)—that were defunct before being allocated SECA charges.\textsuperscript{13} AEP contends that MISO did not bill or collect the allocated SECA charges from these three entities as required by the MISO Tariff, nor did MISO reallocate the SECA charges of the three defunct LSEs. AEP requests that the Commission order

\textsuperscript{10} MISO Tariff, Schedule 22, Part II, Section B (Point-To-Point and Network Integration Transmission Service Charges).

\textsuperscript{11} MISO Tariff, Schedule 22, Part III (Use of Revenues From Part II, Section B of This Schedule).

\textsuperscript{12} MISO Tariff, Schedule 22, Part III (Use of Revenues From Part II, Section B of This Schedule).

\textsuperscript{13} Complaint at 21-22.
MISO to pay AEP and the other PJM transmission owners the outstanding SECA obligations with interest or, alternatively, establish an evidentiary hearing with settlement judge procedures to resolve the dispute.

10. AEP argues that the Commission, in its Order Directing Compliance, explained its intent to establish a revenue recovery mechanism to mitigate cost shifting and to hold transmission owners revenue neutral during the transition period to a new rate design. AEP asserts that the Commission intended the SECA surcharges to be non-bypassable and, therefore, designed to recover all of the revenues lost due to the elimination of through-and-out rates.

11. AEP contends that, in the Order on Initial Decision, the Commission found that the level of AEP’s lost revenues submitted as a part of the SECA compliance filings had been established by record evidence. AEP further argues that failure to provide full SECA compensation would result in a lower rate than that “fixed” by the Commission, violating section 206 of the Federal Power Act (FPA) and constituting an uncompensated taking.

12. AEP contends that MISO’s misallocation of sub-zonal SECA charges to Nicor, Engage, and NPC runs counter to the Commission’s cost causation principle because load that benefitted from the elimination of rate pancaking did not pay its fair share of the SECA charges. Although the defunct LSEs were out of business, AEP claims that their

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14 AEP requests that the Commission direct MISO to assess surcharges to compensate AEP and the other PJM transmission owners. “However, AEP takes no position on how or to whom MISO assesses the surcharge; AEP simply desires to be paid.” Id. at 49.

15 AEP states that, given the subject matter of the complaint, coupled with the need for prompt Commission action, alternative dispute resolution through the Commission’s Dispute Resolution Service would be ineffective and inefficient under the circumstances. Id. at 52-53.

16 Id. at 18 (citing Midwest Indep. Transmission Sys. Operator, Inc., 105 FERC ¶ 61,212, at P 46 (2003) (Order Directing Compliance)).


19 Complaint at 19.
load still existed, was served by another supplier, and should have been allocated SECA charges. AEP asserts that, by this misallocation, MISO effectively subsidized the SECA obligations of these transmission zones, making those rates unjust and unreasonable.  

AEP asserts that the defunct LSEs’ going-out-of-business during the test period was known and measurable for up to two and one-half years before SECA charges were first allocated; thus, AEP argues, the defunct LSEs should never have been allocated SECA charges. AEP further asserts that, once MISO became aware of the error, it had an obligation to inform and correct the SECA allocation errors. AEP states that MISO and the MISO transmission owners on several occasions filed revised tariff sheets to correct Schedule 22 SECA allocations but did not do the same for allocation errors involving Nicor, Engage, and NPC, which AEP contends, at a minimum, demonstrates that MISO acted arbitrarily in the way it handled SECA allocation errors. AEP further argues that the defunct LSEs were not and could not be “Customers” at the time Schedule 22 was filed because they did not exist. Because they were not transmission customers and were not taking transmission service when allocated SECA charges, AEP argues, they could not be “Customers responsible for payment of SECA charges” under Schedule 22.

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20 Id. at 28-29.

21 Id. at 35. Specifically, AEP notes that, during the 2006 evidentiary hearing, in response to a discovery request concerning sub-zones that had not paid their SECA obligations, MISO stated that, “Green Mountain [Power Corporation (Green Mountain)] is the only entity with a SECA Schedule 22 open balance,” thereby leaving out Nicor, Engage, and NPC. AEP further alleges that, when MISO made compliance filings in August 2010 to adjust SECA obligations of MISO sub-zones, and in another corrected compliance filing the following year, MISO did not mention its failure to bill and collect the SECA charges, instead filing tariff sheets to reduce (but not eliminate) the allocation of SECA charges to the Nicor, Engage, and NPC sub-zones. Id. at 37.

Additionally, AEP states that, in the 2010 Compliance Filing, MISO’s Tariff was revised to eliminate the SECA obligations of Quest and CMS ERM for loads that Quest and CMS ERM did not serve during the transition period. AEP claims that MISO and the MISO transmission owners did not know the identity of the suppliers that actually served the loads but initially allocated SECA charges to the entity newly taking transmission service to serve the load. During the year, after the correct suppliers were identified, MISO amended its Compliance Filing to revise Schedule 22 accordingly. AEP states that these efforts of MISO are in contrast to the lack of effort MISO made to identify the suppliers who served the load previously served by Nicor, Engage, and NPC. Id. at 39.

22 Id. at 43.
14. AEP argues that the applicability of the generally applicable SECA charge to compensate for the unbilled and unpaid misallocated SECA charges would be unfair, as it would deny AEP recovery of all its lost revenues and produce an unusual or absurd result that sanctions the allocation of a transmission-related charge to non-existent entities that are not transmission customers.\textsuperscript{23} AEP argues that the generally applicable SECA charge was not designed to replace SECA charges misallocated in the first instance because it could not produce sufficient revenue to compensate the PJM transmission owners for all their lost revenues. AEP asserts that the generally applicable SECA charge was intended to be a limited “source of revenues to the extent that sub-zones did not pay because of bankruptcy or other reasons.”\textsuperscript{24}

15. AEP asserts that its complaint is timely, as it was only in the recent Refund Report that MISO formally acknowledged that Nicor, Engage, and NPC were out of business prior to the 2004-2006 transition period and were never invoiced by MISO. AEP argues that MISO had the obligation to correct errors and notify the participants as soon as possible after the error was identified, but instead it maintained the misallocations, never issued invoices, never reallocated the SECA charges, and never informed the Commission of these problems. AEP asserts that MISO’s silence about the defunct LSEs and its statement that Green Mountain was the only LSE with an outstanding SECA balance cultivated a misperception that MISO had complied with the MISO Tariff by properly allocating, invoicing, and collecting SECA charges from Customers; hence, AEP explains, it did not raise this issue during the evidentiary hearing or in response to MISO’s compliance filings in 2010 and 2011. Therefore, AEP asserts it is not “collaterally estopped” from seeking payment. AEP argues that, even assuming \textit{arguendo} that the ban against relitigation applies (and AEP argues that it does not), AEP contends that it has new information that was not available during the evidentiary hearing in 2006, allowing it to claim the exception of new or changed circumstances to relitigate this issue.\textsuperscript{25}

4. Notice of Complaint and Responsive Pleadings

16. Notice of AEP’s complaint was published in the \textit{Federal Register}, 82 Fed. Reg. 48,221 (2017), with the answer, protests, and interventions due on or before October 30, 2017. On October 13, 2017, MISO moved for an extension of time to answer the complaint. On October 19, 2017, the Commission granted an extension of the due date for the answer to November 13, 2017. Timely motions to intervene were filed

\textsuperscript{23} \textit{Id.} at 44.

\textsuperscript{24} \textit{Id.} at 46.

\textsuperscript{25} \textit{Id.} at 47-49.

17. MISO and the MISO Transmission Owners argue that the complaint is an untimely request for rehearing. They argue that the SECA proceedings provided AEP with many opportunities to timely object to the inclusion of the three LSEs in Schedule 22 but that AEP failed to do so. For example, MISO notes that a sub-zonal allocation method was established in Schedule 22 and MISO included a sub-zonal listing in its compliance filings in 2004. MISO states that AEP did not protest the inclusion of the three LSEs as sub-zones in Schedule 22. MISO states that the Commission accepted the compliance filings in a February 2005 order and set them for hearing. MISO notes that AEP was an active participant in that hearing. MISO further states that the Commission issued its Order on Initial Decision in 2010, pursuant to which MISO and the MISO Transmission Owners made two compliance filings that continued to include the three LSEs as sub-zones, albeit with reduced allocations. MISO states that, throughout these protracted proceedings, AEP failed to raise its concerns associated with the continued inclusion of these entities in Schedule 22. Further, MISO and the MISO Transmission Owners argue that, when the Commission accepted the compliance filings in the September 2015 Order on Compliance, AEP again did not seek rehearing. MISO

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contends that AEP’s repeated failures over a 10-year period to protest the inclusion of the three entities in Schedule 22, and to challenge the allocated charges, clearly point toward rejection of the complaint.\(^{27}\)

18. MISO characterizes as a red herring AEP’s claim that MISO did not, until the Refund Report, formally and publicly state that the three entities were out of business prior to the 2004-2006 transition period and were never invoiced. MISO argues that its non-invoicing of these entities is irrelevant to whether AEP should have protested their inclusion in Schedule 22. MISO states that the complaint admits that public information indicating that the three entities might not have been viable entities was available to any interested party as early as 2005.\(^{28}\)

19. Regarding AEP’s claim concerning MISO’s 2006 response to a discovery request stating that Green Mountain was the only entity with a Schedule 22 open balance, MISO argues that that response did not excuse AEP from pursuing its own inquiries based on the publicly available information about the three entities. In addition, MISO argues that the 2010 and 2011 compliance filings reduced allocations to the three entities. MISO states that AEP was one of the principal recipients of the SECA payments and that it was incumbent upon AEP to make inquiries and go on the record at least at that point, if not earlier, with respect to the status of those entities. However, MISO argues, AEP took no such action, and the September 2015 Order on Compliance is now final.\(^{29}\)

20. MISO and the MISO Transmission Owners also argue that AEP’s complaint is barred by the Commission’s policy against relitigation of settled issues.\(^{30}\) They argue that the sub-zonal allocations were determined in a fully litigated proceeding. MISO argues that AEP had full recourse to extensive discovery and litigation rights to obtain the information it needed and to present that information to the presiding judge and the Commission. MISO states that AEP was one of the largest recipients of MISO’s SECA charges, and it was up to AEP to challenge any allocations to which it disagreed.\(^{31}\) The MISO Transmission Owners contend that AEP’s arguments (that MISO’s misallocation of SECA charges to the three entities created unjust and unreasonable rates, violated cost causation principles, and caused some customers to subsidize other customers) all go to

\(^{27}\) MISO Answer at 10-12; MISO Transmission Owners Answer at 7-9.

\(^{28}\) MISO Answer at 12.

\(^{29}\) Id. at 12-13.

\(^{30}\) Id. at 13-15; MISO Transmission Owners Answer at 9-12.

\(^{31}\) MISO Answer at 13.
the merits of the MISO Tariff provisions that were litigated and ultimately accepted by the Commission years ago.  

21. If the Commission does not dismiss the complaint as untimely, MISO argues that there is no factual basis for AEP’s claims. MISO states that Schedule 22 includes a Commission-approved mechanism to compensate AEP and other recipients of SECA charges for any uncollected amounts involving non-viable entities such as the three entities—i.e., the generally applicable SECA charge. MISO and the MISO Transmission Owners argue that the generally applicable SECA charge was used in the instant case consistent with the provisions of the MISO Tariff and that no further obligation to compensate AEP is contemplated by the MISO Tariff. MISO also disputes AEP’s claim that MISO was required to amend Schedule 22 to provide for revised allocations with respect to the three entities. MISO argues that the Commission had found Schedule 22 to be just and reasonable and that it was up to AEP and other interested parties to timely bring any issue bearing on the justness and reasonableness of the proposed allocations to the Commission’s attention. MISO and the MISO Transmission Owners note that several other parties exercised those rights and obtained revised allocations. By contrast, note the MISO Transmission Owners, AEP waited nearly 13 years to do so.  

22. MISO states that its failure to invoice the three entities was justified or, at worst, constituted a harmless error, as billing defunct entities would have been a meaningless formality. Further, MISO argues that AEP fails to establish a causal connection between MISO’s putative “violation” of the MISO Tariff and AEP’s not receiving its share of SECA allocations associated with the three entities.


32 MISO Transmission Owners Answer at 11.

33 MISO Answer at 19 (citing Order on Initial Decision, 131 FERC ¶ 61,173 at PP 325-327); MISO Transmission Owners Answer at 13. MISO adjusted Quest’s SECA obligation associated with deliveries to North Star Steel because Quest did not service these loads during the transition period. MISO also adjusted CMS ERM’s SECA obligation associated with deliveries to the MECS.DECO.CMSZ sink since it did not service this load during the transition period. However, at that time, MISO lacked the information necessary to identify the replacement suppliers. See September 2015 Order on Compliance, 152 FERC ¶ 61,213 at P 43 (discussing MISO’s adjustments to Quest’s and CMS ERM’s SECA obligations).

34 MISO Transmission Owners Answer at 14.

35 MISO Answer at 18.
23. The MISO Transmission Owners also dispute AEP’s claim that it was guaranteed recovery of every dollar of lost regional through-and-out revenues. They argue that the reality of ratemaking is that one is never guaranteed full recovery. They further argue that PJM’s methodology for SECA caused a shortfall in SECA payments to the MISO Transmission Owners, which substantially offsets the amount AEP claims is owed it and the other PJM transmission owners with respect to the three entities.\(^\text{36}\)

24. Additionally, MISO and the MISO Transmission Owners argue that the complaint is barred by the equitable doctrine of laches and that AEP’s requested relief would result in impermissible retroactive ratemaking.\(^\text{37}\) MISO Transmission Owners also argue that AEP’s requested alternative relief of settlement and hearing procedures is unnecessary and not useful, arguing that there are no material issues of fact in dispute.\(^\text{38}\)

25. MISO also disputes AEP’s claim that Nicor, Engage, and NPC were not and could not be Customers at the time Schedule 22 was filed. MISO argues:

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\text{Schedule 22 defines the term “Customer” as “Transmission Customers as well as other entities in a zone that may not be Transmission Customers but which will bear responsibility for some SECA charges. [Footnote omitted.] To the extent [Nicor], Engage and NPC were not “Transmission Owners,” they were “other entities in a zone . . . which will bear responsibility for some SECA charges. More importantly, Section III of Schedule 22 specifically refers not just to “Customers” but to “Customers responsible for payment that no longer exist or are no longer financially viable.” If the term “Customer” was designed to exclude entities that “no longer exist or are no longer financially viable,” as AEP argues, then Section III would be meaningless.}[\text{39}]\]

26. In its answer to the answers, AEP disputes the claims by MISO and the MISO Transmission Owners that the filed rate doctrine and the rule against retroactive ratemaking only allow prospective relief, given MISO’s improper invoicing. Rather,

\(^{36}\) MISO Transmission Owners Answer at 22-23.

\(^{37}\) MISO Answer at 15-16 (argument regarding laches); MISO Transmission Owners Answer at 24 (argument regarding impermissible retroactive ratemaking).

\(^{38}\) MISO Transmission Owners Answer at 24-25.

\(^{39}\) MISO Answer at 22-23.
citing a 2016 Commission order, AEP argues that, “[i]n cases of tariff violations, the Commission can require the payment of both refunds and surcharges to ensure that all customers pay the rate on file.”\textsuperscript{40} AEP contends that MISO did violate the MISO Tariff and that the violations were material.

5. **Supplemental Answer and Comments**

27. Commission staff held a publicly noticed conference call with MISO on February 14, 2018 to ascertain whether MISO had identified the replacement suppliers for Nicor, Engage, and NPC, as well as how much of the generally applicable SECA revenues remitted to PJM were associated with the three defunct LSEs.\textsuperscript{41}

28. On March 7, 2018, MISO submitted a supplemental answer. MISO states that the MISO Tariff does not require it to identify individual replacement suppliers for the load originally served by Nicor, Engage, and NPC.\textsuperscript{42} MISO states that it followed the generally applicable SECA mechanism zonal rate formula to calculate and assess charges on Customers that were not identified as sub-zones and were taking Point-to-Point or Network Integration Transmission Services sinking within MISO. MISO explains that it then applied these revenues to offset the loss of revenue from any sub-zone with a Customer that no longer exists or was no longer financially viable, such as Nicor, Engage, and NPC. MISO states that it remitted approximately $2.2 million to PJM, which included compensation for the sub-zonal charge obligations of Nicor, Engage, and NPC.\textsuperscript{43} In response to Commission staff’s question on how much of the $2.2 million in generally applicable SECA charges remitted to PJM are associated with the Nicor, Engage, and NPC sub-zones, MISO states that the MISO Tariff is silent as to how it is to allocate the revenues but that this figure could be calculated by dividing the amount of SECA obligations for each of the Nicor, Engage, or NPC sub-zones by the $2.2 million in total generally applicable SECA charges remitted to PJM.\textsuperscript{44} MISO also explains that it

\textsuperscript{40} AEP November 28, 2017 Answer at 6 (citing Louisiana Pub. Serv. Comm’n v. Entergy Corp., 156 FERC ¶ 61,221, at P 33 n.56 (2016) (Louisiana Public Serv. Commission) (citing DC Energy L.L.C. v. PJM Interconnection, L.L.C., 138 FERC ¶ 61,165 (2012) (noting that the Commission can require retroactive billing to correct a filed rate violation))).


\textsuperscript{42} MISO Supplemental Answer at 1-2.

\textsuperscript{43} Id. at 2-3.

\textsuperscript{44} Id. at 3.
provided PJM with access to MISO’s accounting of “General SECA” payments where Nicor, Engage, and NPC were not listed as Customers that paid sub-zonal obligations pursuant to Section II.A of Schedule 22.\textsuperscript{45}


30. AEP contends that MISO’s response does not identify any replacement suppliers and in fact confirms that replacement suppliers were not assessed and did not pay any SECA charges. AEP asserts that the supplier who serves the load of the defunct LSEs would have been identified as a sub-zone in Schedule 22 and thus would not have been subject to a generally applicable SECA charge.\textsuperscript{46} AEP contends that the $2.2 million in generally applicable SECA revenue was not earmarked solely to address the SECA obligations of Nicor, Engage, and NPC, and that, even if all of the remaining generally applicable SECA revenues were applied to the unpaid obligations of these three defunct entities, there would still be more than a $1 million shortfall.\textsuperscript{47} AEP claims that generally applicable SECA charges were only intended to apply to LSEs that go out of business after being assigned SECA charges, and thus MISO’s claims regarding generally applicable SECA charges does not in fact relieve MISO of its obligations to pay the PJM transmission owners for the unbilled and unpaid SECA charges assigned to the three defunct LSEs.\textsuperscript{48} AEP also asserts that MISO, in its supplemental answer, admits for the first time that it kept an accounting of “General SECA” payments under Section II.A of Schedule 22 by customer, that the three defunct LSEs were not included in the listed customers that paid sub-zonal obligations, and thus that MISO was aware that the three defunct LSEs had not paid any SECA charges.\textsuperscript{49}

31. The MISO Transmission Owners support MISO’s supplemental answer. They assert that MISO fully responds to Commission staff’s questions and accurately describes the requirements of Schedule 22 of the MISO Tariff. They argue that Schedule 22 does not require MISO to specifically identify replacement suppliers for the load originally served by the three defunct LSEs. In addition, the MISO Transmission Owners suggest

\begin{itemize}
  \item \textsuperscript{45} \textit{Id.}
  \item \textsuperscript{46} AEP March 23 Comments at 2-3.
  \item \textsuperscript{47} \textit{Id.} at 4.
  \item \textsuperscript{48} \textit{Id.} at 5-6.
  \item \textsuperscript{49} \textit{Id.} at 6-7.
\end{itemize}
that an additional question the Commission is implicitly asking is whether MISO should identify individual replacement shippers for the three defunct LSEs’ sub-zones. They argue that MISO should not. The MISO Transmission Owners state that Schedule 22’s generally applicable SECA charges provide the only compensation available for the three defunct LSEs’ sub-zones. Moreover, they argue, because MISO complies with the requirements of Schedule 22 in calculating and assessing generally applicable SECA charges, no further action is required. They contend that Schedule 22 worked just as it was intended, and, therefore, the PJM transmission owners, and AEP specifically, are not entitled to any further compensation for the three defunct LSEs’ sub-zones.\textsuperscript{50}

\textbf{B. Discussion}

\textbf{1. Procedural Matters}

32. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed.

33. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We accept AEP’s answer to the answers because it has provided information that assisted us in our decision-making process.

\textbf{2. Substantive Matters}

34. As discussed below, we grant in part and deny in part the complaint and set for hearing and settlement judge procedures the factual issues of the matter of the identity of the replacement suppliers for Nicor, Engage, and NPC, and how much, if any, additional generally applicable SECA charges should have been assessed and distributed.

35. One premise of AEP’s complaint is that SECA was designed to recover all of the revenues lost due to the elimination of regional through-and-out rates in the MISO/PJM region. However, the Commission defined the intent of SECA more narrowly in the Order on Initial Decision than it did in the Order Directing Compliance on which AEP relies. In the Order on Initial Decision, the Commission explained:

\begin{quote}
The SECA mechanism is designed to provide the transmission owners with an opportunity to recover their lost through-and-out revenues, no more and no less. While certain entities may pay more in regional through-and-out rate
\end{quote}

\textsuperscript{50} MISO Transmission Owners March 23 Comments at 3-5.
obligations than they would have paid in SECA obligations, other entities may pay less than their SECA obligations to the extent that they have supported adjustments for known and measureable differences.\[^{51}\]

In so doing, the Commission did not consider full recovery of lost through-and-out revenues to be guaranteed, as shown by the qualifier that it was only providing “an opportunity” to recover those revenues. MISO’s Tariff requires revenues derived from the generally applicable SECA charges to be used to compensate transmission owners who did not receive full payment of their SECA obligation when a Customer responsible for payment no longer exists or is no longer financially viable. However, if in any month, the revenues derived from the generally applicable SECA charges are insufficient to provide full payment of the amount of the SECA obligation for each sub-zone for which a Customer responsible for payment no longer exists or is no longer financially viable, the MISO Tariff provides that the generally applicable SECA revenues shall be allocated to each sub-zone that has such Customers based on the ratio of each such sub-zone’s unpaid monthly SECA obligation to the total unpaid monthly SECA obligation of the sub-zones. By implication, the generally applicable SECA revenues may not be sufficient to cover 100 percent of the total unpaid monthly SECA obligation. That is, because the allocation of generally applicable SECA revenues is based on a ratio of each sub-zone’s unpaid amount to the total unpaid amount, the mechanism accounts for the possibility that the total generally applicable SECA revenues may not be sufficient to provide full recovery of lost through-and-out revenues.

36. With respect to AEP’s claim that MISO’s allocation of sub-zonal SECA charges to Nicor, Engage, and NPC violated the MISO Tariff, we find that MISO followed the procedures set forth in Schedule 22 of the MISO Tariff.\[^{52}\] AEP makes no claim that MISO incorrectly identified Nicor, Engage, and NPC using e-tag data, as required by Schedule 22 of the MISO Tariff. Although AEP alleges that MISO violated the MISO Tariff because Nicor, Engage, and NPC were not “Customers” when MISO included them as sub-zones in Attachment B of Schedule 22, MISO correctly notes that Schedule 22 explicitly states that “Customers” are “Transmission Customers as well as other entities in a zone that may not be a Transmission Customer but which will bear responsibility for some SECA charges.”\[^{53}\] Because Nicor, Engage, and NPC fall within

\[^{51}\] Order on Initial Decision, 131 FERC ¶ 61,173 at P 364.

\[^{52}\] That is, MISO used e-tag data to identify transactions sourcing in PJM and sinking in each MISO sub-zone to determine the SECA obligation for each sub-zone.

\[^{53}\] MISO Answer at 23 (citing MISO Tariff, Schedule 22, Part I (General) (emphasis added)).
this latter half of the definition of Customer, we find that MISO did not violate the MISO Tariff when it included Nicor, Engage, and NPC in Attachment B of Schedule 22, even though those entities were not Transmission Customers at the time.

37. Further, even if it were known that some of the sub-zonal SECA charges were allocated to defunct entities or sub-zones, the MISO Tariff provides no mechanism to reallocate these *entity-specific* charges to another entity or sub-zone. Instead, the MISO Tariff provides a mechanism—the generally applicable SECA charge—to collect replacement charges for sub-zones that have Customers responsible for payment that no longer exist or are no longer financially viable. MISO assessed and remitted to PJM approximately $2.2 million in generally applicable SECA charges in accordance with this Tariff provision.

38. Notably, in the Order on Initial Decision, the Commission explained why entity-specific SECA charges could not be simply reallocated to another entity or sub-zone. As AEP itself notes, there were cases where an LSE identified as a sub-zone successfully argued that it should not be responsible for SECA charges because it no longer served the load associated with the e-tags and, instead, the charges should be assigned to a different LSE. In those cases, the Commission agreed that the original LSEs identified as sub-zones should not be responsible for the sub-zonal SECA charges listed in Attachment B of Schedule 22. However, the Commission found (over the objection of AEP and others) that the replacement LSEs should *not* pay the sub-zonal SECA charges originally allocated to the sub-zones and, instead, that the replacement LSEs should pay the generally applicable SECA charge that is assessed to entities without sub-zone obligations. The Commission found that the original sub-zonal SECA allocations reflected the original LSEs’ transaction patterns and were not necessarily representative of the transaction patterns of the replacement LSEs. The Commission explained that the generally applicable SECA charge under Schedule 22 was an appropriate proxy for the entities newly taking transmission service to serve the original sub-zonal loads during the transition period.\(^{54}\)

39. According to MISO’s Tariff, generally applicable SECA charges are not assessed on any Customer identified as a sub-zone in Attachment B of Schedule 22, which includes the defunct entities Nicor, Engage, and NPC. However, because those entities were defunct and were no longer serving the load associated with the sub-zones for which they were identified during the period that the SECA was in effect, they were not

\(^{54}\) See Order on Initial Decision, 131 FERC ¶ 61,173 at PP 326-328 (directing MISO to adjust the SECA sub-zone charges to LSEs that no longer served the relevant loads and finding that the entity newly taking transmission service to serve this load during the remainder of the transition period should pay the generally applicable zonal SECA charge under Schedule 22).
assessed the SECA obligations identified for such sub-zones. The replacement LSE serving the load associated with those sub-zones should have been assessed the generally applicable SECA charge for such load, consistent with the above precedent.

40. MISO’s supplemental answer indicates that MISO did not specifically identify replacement suppliers for the load originally served by Nicor, Engage, and NPC and that MISO compensated PJM transmission owners for charges attributable to sub-zones that no longer existed through the generally applicable SECA mechanism. Although MISO states that it provided PJM with access to accounting records which did not list Nicor, Engage, and NPC as Customers that paid sub-zonal SECA obligations, it is not clear from the existing record whether these three entities were treated as “entities that do not exist” for the purpose of allocating the generally applicable SECA revenues among PJM transmission owners. If Nicor, Engage, and NPC were treated as “entities that do not exist,” then the allocation method in Section III of Schedule 22 would have provided AEP with a larger share of the generally applicable SECA revenues than it would have received otherwise.

41. In its supplemental answer, MISO asserts that the MISO Tariff does not explicitly require it to identify individual replacement suppliers for the load originally served by Nicor, Engage, and NPC. However, the MISO Tariff’s ambiguity on MISO’s responsibility to identify replacement suppliers does not necessarily mean that replacement suppliers should not be identified. The Commission addressed a similar situation involving CMS ERM and Quest, who did not serve load during the 16-month SECA transition period; there was insufficient information in the record to confirm the identity of the replacement suppliers. In that case, the Commission set the replacement supplier identity issue for hearing and settlement judge procedures, during which replacement suppliers were identified and, through the Order Approving Settlement, assessed generally applicable SECA charges for the load they served during the transition period.55 Similarly, because MISO failed to identify replacement suppliers and assess them generally applicable SECA charges for the load they served during the transition period, we will set for hearing and settlement judge procedures the matter of the identity of the replacement suppliers for Nicor, Engage, and NPC, and how much, if any, additional generally applicable SECA charges should have been assessed and distributed to AEP and the other PJM transmission owners.

42. Because we have not yet identified the replacement suppliers, it is premature to address the respondents’ arguments regarding the rule against retroactive ratemaking. In

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55 See September 2015 Order on Compliance, 152 FERC ¶ 61,213 at P 49 (setting for hearing and settlement judge procedures the verification of the identity of the new supplier(s) of the North Star Steel load and retail load at the MECS.DECO.CMSZ sink); 2016 Order Approving Settlement, 157 FERC ¶ 61,228 at P 2.
turn, we need not reach the merits of MISO’s and the MISO Transmission Owners’ arguments that AEP’s complaint is barred by the doctrine of laches or is otherwise barred as untimely.

43. Accordingly, we grant in part and deny in part the complaint and set for hearing and settlement judge procedures the matter of the identity of the replacement suppliers for Nicor, Engage, and NPC, and how much, if any, additional generally applicable SECA charges should have been assessed and distributed to AEP and the other PJM transmission owners.

44. We find that the complaint raises issues of material fact that cannot be resolved based upon the record before us and that are more appropriately addressed in the hearing and settlement judge procedures we order below. Accordingly, we will set the complaint for a trial-type evidentiary hearing and settlement judge procedures under section 206 of the FPA.

45. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure.\(^{56}\) If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.\(^ {57}\) The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges’ availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

46. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month refund period following the refund effective date. Consistent


\(^{57}\) If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission’s website contains a list of Commission judges and a summary of their background and experience (http://www.ferc.gov/legal/adr/avail-judge.asp).
with our general policy of providing maximum protection to customers, we will set the refund effective date at the earliest date possible, i.e., October 10, 2017, the date of the complaint.

47. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within approximately twelve months of the commencement of hearing procedures, or, if the case were to go to hearing immediately, July 29, 2019. Thus, we estimate that, absent settlement, we would be able to issue our decision within approximately ten months of the filing of briefs on and opposing exceptions, or by May 31, 2020.

II. MISO’s and PJM’s Refund Report

A. Background

48. In the September 2015 Order on Compliance, the Commission accepted compliance filings and ordered MISO and PJM to implement the SECA refunds/surcharges. On September 18, 2017, MISO and PJM submitted the Refund Report to comply with prior Commission orders in Docket Nos. ER05-6-118, ER10-2283-000, ER10-2283-001, EL04-135-120, EL02-111-139, and EL03-212-134.

49. MISO and PJM state that the Refund Report contains three components: (1) a link to the SECA Refund Reporter file; (2) the SECA Refund Reporter User Guide; and (3) a chart reflecting SECA settlements. MISO and PJM assert that these three components,


taken together, describe the process for calculating the refunds/surcharges, the actual refund/surcharge amounts by entity, and the specific inputs for calculating the refunds/surcharges. MISO and PJM add that the SECA Refund Reporter is an Excel spreadsheet with seven tabs that summarizes the steps in calculating the SECA refunds to LSEs from transmission owners and includes the final refund or surcharge amounts by entity. MISO and PJM state that the SECA Refund Reporter Guide is a user handbook designed to explain the format and content of the Refund Reporter and its data sources, and it also provides guidance on how to use the SECA Refund Reporter itself. MISO and PJM also assert that a key input to the refund calculations is the representation of all settlement agreements that have occurred among various transmission owners and LSEs. MISO and PJM state that the SECA Refund Reporter includes over 70 Commission-approved settlement agreements, and these settlement agreements affect approximately 20,000 LSE/transmission owner pairs.  

MISO and PJM note that several LSEs on the MISO side are considered non-viable, and these entities are described in the SECA Refund Reporter on pages 3-4. MISO and PJM state that MISO has engaged in significant due diligence to make contact with these entities. They state that MISO commits to update the Commission on these entities as they are included in MISO’s future billings.

B. Notice of Filing and Responsive Pleadings


On October 10, 2017, Six Michigan Cities filed a protest to the Refund Report. Six Michigan Cities assert that they have not received the full refunds owed to them, and they ask the Commission to take further action to ensure compliance with its orders. Six Michigan Cities claim that they are owed a refund of SECA charges of approximately $1.2 million, plus interest, for the period April 2005 through March 2006. In this regard, they assert that Constellation Energy Commodities Group, Inc. (Constellation) billed Six Michigan Cities for SECA charges, and Six Michigan Cities assert that they  

60 Refund Report at 2-3.

61 Id. at 3-4.

62 Six Michigan Cities are the City of Bay City, Michigan, and the Michigan Public Power Rate Payers Association (MPPRPA). MPPRPA’s members are the Cities of Chelsea, Eaton Rapids, Hart, Portland, and St. Louis, Michigan.

63 Protest of Six Michigan Cities at 1-4.
paid these charges in full. Therefore, Six Michigan Cities claim that they are now entitled to refunds with interest. On October 12, 2017, Six Michigan Cities filed a supplement to their protest. They state that after discussion with Exelon/Constellation, there appears to be no dispute, although a few ministerial items remain to be finalized.⁶⁴

53. On October 10, 2017, AEP filed a protest to the Refund Report, making the same claims and raising the same issues as it raised in its complaint, discussed above. AEP states that the Refund Report informs the Commission that these “non-viable” transactions “will be addressed on a case-by-case basis later as needed information becomes available.”⁶⁵ Consistent with that representation, AEP states that it concurrently filed the instant complaint against MISO.⁶⁶

54. On November 13, 2017, MISO and the MISO Transmission Owners⁶⁷ filed motions for leave to answer and answers to the protest filed by AEP, making the same arguments as they make in their answers to AEP’s complaint, discussed above.

C. Discussion

1. Procedural Matters

55. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept the answers of MISO and the MISO Transmission Owners because they have provided information that assisted us in our decision-making process.

2. Substantive Matters

56. The Refund Report shows the refund or surcharge amounts with interest, related to the adjustments and corrections of SECA in compliance with prior Commission orders. The Refund Report explains the steps in calculating the SECA refunds to LSEs from transmission owners and includes the final refund or surcharge amounts by entity. The Refund Report makes appropriate adjustments for the amount of SECA already paid, existing transactions (if any), interest, and LSE/transmission owner settlements in order

⁶⁴ Supplement to Protest of Six Michigan Cities at 1.

⁶⁵ Protest of AEP at 4 (citing SECA Refund Reporter User Guide at 3-4).

⁶⁶ Id.

⁶⁷ The MISO Transmission Owners for purposes of this filing are the same as those participating in their answer to the complaint.
to determine the LSE’s refund or surcharge. The Refund Report appropriately used data from MISO and PJM for amounts paid in 2004-2006 and used the 2010 Compliance Filings to calculate the amounts owed under the September 2015 Order on Compliance.

57. MISO and PJM report that several LSEs in MISO are considered non-viable and that MISO has made appropriate efforts and due diligence to make contact with these entities, and they affirm that MISO will include these entities in the next available billing cycle if it is able to locate accurate contact information for these entities. The Commission notes that MISO has committed to update the Commission if these entities are included in MISO’s future billings.

58. The settlement of the dispute between Six Michigan Cities and Exelon/Constellation resolves the issues between them. All remaining protests on the Refund Report are beyond the scope of the Refund Report, as those issues do not concern compliance with the specific requirements of the 2010 Order on Initial Decision. Any resettlements reflected in the Refund Report may be subject to further resettlement as a result of the instant complaint proceeding and any such further resettlements will be addressed in the instant complaint proceeding. Accordingly, we will accept the Refund Report.

The Commission orders:

(A) AEP’s complaint is hereby granted in part and denied in part, as discussed in the body of this order.

(B) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the Federal Power Act, particularly section 206 thereof, and pursuant to the Commission’s Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held in Docket No. EL18-7-000 concerning the matter of the identity of the replacement suppliers for Nicor, Engage, and NPC, and how much, if any, additional generally applicable SECA charges should have been assessed and distributed to AEP and the other PJM transmission owners. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (C) and (D) below.

(C) Pursuant to Rule 603 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge
designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(D) Within thirty (30) days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every sixty (60) days thereafter, informing the Commission and the Chief Judge of the parties’ progress toward settlement.

(E) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within fifteen (15) days of the date of the presiding judge’s designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street, NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission’s Rules of Practice and Procedure.

(F) The refund effective date established pursuant to section 206(b) of the FPA is October 10, 2017, as discussed in the body of this order.

(G) MISO’s and PJM’s Refund Report submitted in Docket Nos. ER05-6-118, ER10-2283-000, ER10-2283-001, EL04-135-120, EL02-111-139, and EL03-212-134 is hereby accepted, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(SEAL)

Nathaniel J. Davis, Sr.,
Deputy Secretary.