

I. Background

2. SPP is a non-profit corporation based in Little Rock, Arkansas. SPP is a Commission-approved regional transmission organization, administering an open access transmission tariff (OATT) on behalf of its 66 transmission owning members, with transmission service over portions of Arkansas, Kansas, Louisiana, Missouri, Nebraska, New Mexico, Oklahoma, and Texas.

3. Western is a federal power marketing administration that markets federal power and owns and operates transmission facilities.⁴ Heartland is a public corporation and political subdivision of South Dakota, providing power, energy services, and community development programs in South Dakota, Minnesota, and Iowa. Heartland provides wholesale electric service to 27 municipal electric systems, six state institutions, and one cooperative. Basin is an electric generation and transmission cooperative, generating and transmitting wholesale bulk electric power primarily to 134 rural electric system members located in Colorado, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, South Dakota, and Wyoming. Western's Upper Great Plains Region facilities are integrated with the facilities of Heartland and Basin to make the Integrated System. Western operates the Integrated System and administers an OATT on file with the Commission.⁵ The Integrated System directly interconnects with the transmission systems of SPP and MISO, among others.

4. The Commission has stated that the coordination of activities among regions is a significant element in maintaining a reliable bulk transmission system and developing competitive markets; thus, regional transmission organizations must develop mechanisms to coordinate their practices with neighboring regions.⁶ The Commission encourages interconnecting systems to share system plans and otherwise use consistent assumptions

⁴ Western has several regions. The facilities at issue in these proceedings are its Upper Great Plains Region.

⁵ For ease of reference, in this order we will use the term Western to refer to all the Integrated System parties.

⁶ *See, e.g., Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. Regulations Preambles 1996-2000 ¶ 31,089, at 31,167 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. Regulations Preambles 1996-2000 ¶ 31,092 (2000), *pet. for review dismissed sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

and data, and to identify system enhancements that could relieve congestion or integrate new resources.⁷

5. One tool for enhancing regional seams coordination is the Congestion Management Process (CMP), a standardized document resulting from discussions among multiple operating entities to resolve how different congestion management methodologies (i.e., market-based and traditional transmission loading relief (TLR) measures) interact to ensure system reliability.⁸ The CMP provides that participating operating entities⁹ will agree to observe limits on a list of coordinated flowgates, making them reciprocal coordinated flowgates. Agreements that implement the CMP are “reciprocal coordination agreements.”¹⁰ Reciprocal coordination agreements set out definitions and other CMP implementation provisions, and attach the uniform CMP as part of the agreement between the parties. Under the CMP, entities with markets agree to manage congestion on external flowgates by controlling their market flows to honor historical (pre-market) flow levels on those flowgates.

6. Western’s interconnections with MISO have been coordinated under the CMP under various agreements. In 2005, the Commission accepted, in fulfillment of a condition of approving MISO’s Day 2 market,¹¹ the Seams Operating Agreement with

⁷ *See, e.g., Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 523, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008) *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁸ *See* Executive Summary of the CMP, in the MISO-SPP JOA at page 66 of 120.

⁹ Operating entities are entities that operate and control a portion of the bulk transmission system. *See, e.g.*, the definition of operating entities in section 2.2.39 of the MISO-SPP JOA.

¹⁰ *See, e.g.*, section 2.2.43 of the MISO-SPP JOA:

2.2.43 “Reciprocal Coordination Agreement” shall mean an agreement between Operating Entities to implement the reciprocal coordination procedures defined in the Congestion Management Process.

¹¹ *Midwest Independent Transmission System Operator, Inc.*, 110 FERC ¶ 61,290 (2005) (MISO-MAPP SOA Order). As discussed below, the MISO-MAPP SOA, which has since been terminated, included section 5.1.10, providing for transactions through the

(continued...)

Mid-Continent Area Power Pool (MAPP) (MISO-MAPP SOA), which included Western's interconnections with MISO. The SOA provided for implementation of the CMP.

7. In 2009, MISO proposed to offer implementation of the CMP as a service under Part II of Module F of the MISO tariff.¹² The Commission accepted MISO Seams Service as just and reasonable, on the grounds that it allows MISO to offer a standard service, including implementation of the CMP, through its tariff instead of negotiating individual agreements. Effective March 31, 2009, MISO terminated the MISO-MAPP SOA, and on April 1, 2009, Western became a MISO Seams Service customer to coordinate its seam with MISO.

8. In April 2011, MISO filed to revise its Seams Service to add a provision requiring capacity sharing. Under the capacity sharing provision, the Seams Service customer and MISO make available for each other's use their combined contract path capacities to the same entity. In July 2011, over the objections of Western and others, the Commission accepted the capacity sharing provision in MISO Seams Service.¹³

9. The capacity sharing provision in MISO Seams Service is similar to section 5.2 of the MISO-SPP JOA's implementing provisions.¹⁴ Section 5.2 of the MISO-SPP JOA was the subject of a petition for declaratory order filed by MISO in April 2011. In the petition, MISO sought Commission confirmation that under section 5.2 of the MISO-SPP JOA, SPP was required to share with MISO its contract capacity to Entergy Arkansas, Inc. (Entergy Arkansas) in the event Entergy Arkansas joined MISO. The Commission

North Dakota Export (NDEX) flowgate to be limited to the contract path capacity of the facility.

¹² *Midwest Independent Transmission System Operator, Inc.*, 123 FERC ¶ 61,265 (2008). The tariff section's title is Congestion Management Coordination Service, but for consistency with the filings and previous orders, in this order we refer to it as Seams Service.

¹³ *Midwest Independent Transmission System Operator, Inc.*, 135 FERC ¶ 61,205 (2011) (MISO Seams Service Order).

¹⁴ Section 5.2 (Sharing Contract Path Capacity) of the implementing provisions of the MISO-SPP JOA provides, in relevant part, "If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties."

granted MISO's petition but required MISO and SPP to engage in good faith negotiations to revise the MISO-SPP JOA.¹⁵

10. On March 30, 2011, in anticipation of MISO's Filing to revise its Seams Service to provide for capacity sharing, Western notified MISO of its intent to terminate MISO Seams Service, effective April 30, 2012. In February 2012, Western confirmed to MISO its termination of the Seams Service and informed MISO that Western was entering into the Western-SPP JOA, containing the CMP. Western advised MISO that because of the Western-SPP JOA, Western would continue as a reciprocal entity with MISO under the CMP.¹⁶ In a response dated February 27, 2012, MISO stated that it would not treat Western's flowgates as reciprocal coordinated flowgates unless Western continued MISO Seams Service, and MISO confirmed this response in a meeting with SPP and Western on February 28, 2012.¹⁷

II. Petition for Declaratory Order

11. On April 24, 2012, Petitioners filed the Petition.¹⁸ Petitioners seek Commission confirmation that: (1) MISO is obligated by the MISO-SPP JOA to respect the reciprocal coordinated flowgates of a third party that has executed a reciprocal coordination agreement with SPP; (2) the proposed Western-SPP JOA is a reciprocal coordination agreement under the MISO-SPP JOA; and (3) MISO is obligated by the MISO-SPP JOA to respect Western's flowgates as reciprocal coordinated flowgates.¹⁹ Petitioners also seek a Commission declaration that Western's termination of MISO Seams Service does not affect MISO's obligation to honor the reciprocal coordinated flowgates established pursuant to MISO Seams Service, because Western has entered into a reciprocal coordination agreement with SPP, i.e., the Western-SPP JOA.²⁰

¹⁵ *Midwest Independent Transmission System Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (Capacity Sharing Order), *reh'g denied*, 138 FERC ¶ 61,055 (2012). SPP's appeal of the Capacity Sharing Order is pending before the D.C. Circuit.

¹⁶ Petition at 9.

¹⁷ *Id.*

¹⁸ Petitioners also requested a shortened notice period and expedited treatment regarding the Petition.

¹⁹ Petition at 1-2, 11-15, 17.

²⁰ *Id.* at 16.

12. Petitioners argue that under the MISO-SPP JOA's definition of "reciprocal entities," MISO and Western are reciprocal entities because they have entered into reciprocal coordination agreements implementing and containing the CMP with the same third party, SPP. Petitioners maintain that the MISO-SPP JOA's definitions of "reciprocal coordinated flowgates" and "operating entities" do not limit reciprocal coordination under the CMP to parties to the same reciprocal agreement, and they recognize agreements involving a party or parties to a reciprocal coordination agreement and a third party.²¹

13. Petitioners state that SPP, MISO, PJM Interconnection, LLC (PJM), and Western have all entered into agreements containing the CMP, and that each of these parties has respected the others' flowgate allocations, whether or not there is a bilateral agreement between them.²² Petitioners state by way of example that SPP and PJM do not have a reciprocal coordination agreement directly with each other, yet they treat each other's flowgates as reciprocal coordinated flowgates because SPP and PJM both have reciprocal coordination agreements with MISO.²³ Petitioners also state that Tennessee Valley Authority (TVA) does not have a reciprocal coordination agreement with MISO or SPP, but MISO, SPP, and TVA respect each others' flowgate allocations.²⁴

²¹ *Id.* at 11-13. The MISO-SPP JOA definitions state, in relevant part:

2.2.44 "Reciprocal Coordinated Flowgate(s)" shall mean a Flowgate that is subject to reciprocal coordination by Operating Entities, under . . . a Reciprocal Coordination Agreement between one or more Parties and one or more Third Party Operating Entities. A [Reciprocal Coordinated Flowgate] is: . . . A Coordinated Flowgate that is (a) affected by the transmission of energy by one or more Parties and one or more Third Party Operating Entities, and (b) expressly made subject to Congestion Management Process reciprocal coordination procedures under a Reciprocal Coordination Agreement between or among such Parties and Third Party Operating Entities. . . .

2.2.45 "Reciprocal Entity" shall mean any entity that coordinates the future-looking management of Flowgate capability in accordance with a reciprocal agreement as described in the Congestion Management Process.

²² *Id.* at 14.

²³ *Id.*

²⁴ *Id.*

14. Petitioners state that given MISO's denial that the proposed Western-SPP JOA makes Western a reciprocal entity with MISO, and MISO's refusal to treat the Western flowgates as reciprocal coordinated flowgates except pursuant to MISO Seams Service, Commission resolution of this issue is important to maintaining the reliability of the transmission system and the efficient operation of markets.²⁵

15. Petitioners request waiver of the requirement to include a filing fee with the Petition.²⁶ Petitioners assert that Western is exempt from the filing fee requirement under the Commission's regulations because it is engaged in the official business of the United States.²⁷ Likewise, Petitioners contend that Heartland is exempt from the filing fee because it is a political subdivision of the State of South Dakota, and Basin is exempt because it is a non-public utility and the Commission's policy is to waive the filing fee for petitions for declaratory orders that are filed by non-public utilities.²⁸ Petitioners request that the Commission waive the filing fee for SPP even though it is a public utility because it is a non-profit organization. Petitioners state that they will file the fee within 30 days if the Commission denies the request for waiver.²⁹

A. Notice of Filing and Responsive Pleadings

16. Notice of the Petition was published in the *Federal Register*, 77 Fed. Reg. 26,001 (2012), with motions to intervene or protests due on or before May 24, 2012. Timely motions to intervene were filed by Westar Energy Inc.; Nebraska Public Power District (NPPD); Ameren Energy Marketing; Missouri River Energy Services; Sunflower Electric Power Corp. and Mid-Kansas Electric Company, LLC; Exelon Corporation (Exelon); and Tatanka Wind Power, LLC (Tatanka). In addition, Southwestern Power Administration (Southwestern) filed a late-filed motion to intervene on May 25, 2012.

²⁵ *Id.* at 2.

²⁶ *Id.* at Cover Letter.

²⁷ *Id.* (citing 18 C.F.R. § 381.108(a) (2012); *Western Area Power Admin.*, 133 FERC ¶ 61,193, at P 9 (2010) (*Western*)).

²⁸ *Id.* (citing *California Public Utilities Commission*, 132 FERC ¶ 61,047, at P 11 (2010) (*CPUC*); *Big Rivers Electric Corp.*, 128 FERC ¶ 61,264, at P 109 (2009) (*Big Rivers*)).

²⁹ *Id.*

17. Timely motions to intervene and protest were filed by MISO, MISO Transmission Owners,³⁰ Manitoba Hydro, and Xcel Services Inc. (Xcel) on behalf of Southwestern Public Service Company (SPS), Northern States Power Company (Minnesota), and Northern States Power Company (Wisconsin). A timely motion to intervene and comments were filed by Associated Electric Cooperative, Inc. (Associated Electric). Petitioners filed an answer to the protests on June 12, 2012, to which MISO and MISO Transmission Owners filed answers on June 27, 2012.

1. MISO's Protest

18. MISO argues that the Petition should be rejected because it relies on acceptance of the proposed Western-SPP JOA, which the Commission has not yet accepted and which the Commission should reject, for the reasons stated in MISO's protest of the proposed Western-SPP JOA.³¹ In addition, MISO argues that the Petition should be rejected because SPP is required to initiate dispute resolution procedures under the MISO-SPP JOA, but SPP has not initiated such procedures with MISO.³² MISO also argues that the Petition should be rejected because it leaves out relevant facts.³³ In addition, MISO argues that the Petition should be rejected because sections 5.4-5.6 of the proposed Western-SPP JOA conflict with the CMP by limiting capacity rights, whereas the CMP allows for maximum use of the system and imposes restrictions only when designated

³⁰ In this filing, MISO Transmission Owners are Ameren Services Co, as agent for Union Electric Co. d/b/a/Ameren Missouri, Ameren Illinois Co. d/b/a/Ameren Illinois and Ameren Transmission Co. of Illinois; American Transmission Co. LLC; Big Rivers Electric Corp.; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corp. for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Co.; Michigan Public Power Agency; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Co.; Northwestern Wisconsin Electric Co.; Otter Tail Power Co.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Co. (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

³¹ MISO May 24, 2012 Protest in Docket No. EL12-60-000 at 12-13.

³² *Id.* at 13-14.

³³ *Id.* at 15-16.

flowgates become congested.³⁴ Because of this conflict, MISO alleges that the proposed Western-SPP JOA does not qualify as a reciprocal coordination agreement.

19. MISO claims that sections 3.2 and 6.1 of the CMP provide for reciprocal coordination by parties whose systems are interconnected, and that the third party reciprocity provided for in section 6.2 of the CMP is intended only to allow coordination between parties that are not interconnected to each other.³⁵ As support for the argument that the third party reciprocity in section 6.2 of the CMP only applies to systems that are not interconnected, MISO points to section 79.1 of the terms and conditions of MISO Seams Service, which provides that an eligible Seams Service customer is one that is interconnected to MISO. MISO asserts that after the Commission accepted MISO Seams Service, an entity with interconnections to MISO must become a MISO Seams Service customer before MISO will agree to implement the CMP, i.e., restrict its use of the system using historic allocations on reciprocal coordinated flowgates. Therefore, MISO argues that Western, after terminating its status as a reciprocal entity under MISO Seams Service, “cannot pretend that it is no longer eligible for Seams Service, yet somehow is qualified to become a Reciprocal Entity by other means and obtain the benefits of Seams Service.”³⁶

20. MISO argues that a diagram in section 6.2 of the CMP shows that parties that do not have reciprocal coordination agreements with each other but have reciprocal coordination agreements with a third party are required to treat as reciprocal coordinated flowgates only those flowgates that are significantly affected by all three parties.³⁷ In contrast, MISO claims that the Western flowgates that Petitioners would like MISO to be required to honor as reciprocal coordinated flowgates are only affected by two parties,

³⁴ *Id.* at 17-18. As discussed in the next section of this order addressing the proposed Western-SPP JOA, under sections 5.4-5.6 of that agreement, SPP and Western agree to limit energy exchanges to their respective contract path capacities (i.e., they agree not to share their contract path capacity with each other).

³⁵ *Id.* at 19-22.

³⁶ *Id.* at 22.

³⁷ The diagram in section 6.2 of the CMP, in the MISO-SPP JOA at page 92 of 120, represents the coordinated flowgates of three operating entities’ service territories, in the form of three overlapping circles. In the diagram, an area in which only two of the circles overlap is shaded purple, while the area in which all three circles overlap is shaded gray.

MISO and Western, and thus do not qualify as reciprocal coordinated flowgates between MISO and Western under the CMP.

21. MISO further argues that, assuming for purposes of argument, the proposed Western-SPP JOA does qualify as a reciprocal coordination agreement, the third party reciprocity provision does not require MISO to treat the Western flowgates as reciprocal coordinated flowgates, as they would have been treated under MISO Seams Service.³⁸ MISO contends that granting the Petition would amount to revising the CMP and the MISO-SPP JOA, which cannot be done in a petition for declaratory order.³⁹ MISO also argues that that granting the Petition would allow Western to obtain seams coordination benefits from MISO while avoiding reciprocal obligations to MISO (e.g., contract path capacity sharing) and would be a collateral attack on the Commission's capacity sharing findings in the Capacity Sharing Order and MISO Seams Service Order. Finally, MISO argues that granting the Petition would give Western preferential treatment compared to those customers who use MISO Seams Service but who cannot enter into seams agreements with SPP because they do not interconnect with SPP.⁴⁰

2. MISO Transmission Owners' Protest

22. MISO Transmission Owners argue that the Petition is an attempt by SPP and Western to evade the Commission's findings in the Capacity Sharing Order, the MISO Seams Service Order, and the order on the MISO-SPP JOA that capacity sharing provisions are just and reasonable.⁴¹ MISO Transmission Owners argue that capacity sharing reflects the efficient use of transmission systems. MISO Transmission Owners also argue that the effect of approving the Western-SPP JOA and granting the relief requested in the Petition is that it would result in compensation for loop flows, and such compensation is permitted only if an entity shows that the loop flow jeopardizes

³⁸ *Id.* at 25-27.

³⁹ *Id.* at 20-

⁴⁰ *Id.* at 26-27.

⁴¹ MISO Transmission Owners May 24, 2012 Protest in Docket No. ERL12-60-000 at 6-8 (citing Capacity Sharing Order, 136 FERC ¶ 61,010; *Southwest Power Pool, Inc.*, 110 FERC ¶ 61,031, at P 24 (2005); MISO Seams Service Order, 135 FERC ¶ 61,205 at P 41).

reliability or diminishes the entity's economic use of the system, which the Petitioners have not shown.⁴²

23. In addition, MISO Transmission Owners allege that granting the Petition and accepting the proposed Western-SPP JOA would place internal constraints on transmission capacity and impact MISO transmission customers in a manner contrary to the Capacity Sharing Order and the MISO Seams Service Order.⁴³ MISO Transmission Owners further argue that granting the Petition and accepting the proposed Western-SPP JOA would allow Western to receive the benefits of seams service without the costs.⁴⁴

24. MISO Transmission Owners also argue that the Petition is unsupported, in that it fails to describe how MISO could comply with a finding that MISO treat the Western flowgates as reciprocal coordinated flowgates, in light of the transmission capacity constraints in the proposed Western-SPP JOA.⁴⁵ MISO Transmission Owners claim the Petition should be rejected because it fails to provide such relevant information as the identity of the flowgates at issue.⁴⁶ MISO Transmission Owners maintain that granting the Petition could require a non-party regional transmission organization (MISO) to comply with the proposed Western-SPP JOA, and could have market-wide implications that have not been adequately described.⁴⁷ Lastly, MISO Transmission Owners argue that the Petition should be denied because it is predicated on Commission acceptance of the proposed Western-SPP JOA, which should not be accepted.⁴⁸

3. Xcel's Protest

25. Xcel argues that the Western-SPP JOA does not qualify as a "reciprocal coordination agreement" and, thus, Western is not entitled to reciprocal entity treatment

⁴² *Id.* at 10 (citing *Northern Indiana Public Service Co. v. Midwest Independent Transmission System Operator, Inc.*, 116 FERC ¶ 61,006, at P 11 (2006) (*Northern Indiana*)).

⁴³ *Id.* at 10-11.

⁴⁴ *Id.* at 11.

⁴⁵ *Id.* at 11-12.

⁴⁶ *Id.* at 12-13.

⁴⁷ *Id.* at 14.

⁴⁸ *Id.* at 14-15.

without certain conditions discussed in Xcel's May 11, 2012 comments in Docket No. ER12-1586-000.⁴⁹ Xcel acknowledges that MISO is required by the MISO-SPP JOA to treat as reciprocal coordinated flowgates the flowgates of a third party that has executed a reciprocal coordination agreement with SPP, because all parties are signatories to the CMP, which provides for such reciprocal treatment. Xcel recommends that both dockets be considered jointly.

26. Xcel argues that the CMP and sections 5.4-5.6 of the proposed Western-SPP JOA present conflicting contract path capacity concepts. Xcel maintains that an entity that limits available transmission to its contract path capacity should not be considered a reciprocal entity under the CMP. Thus, Xcel believes that Western should not be treated as a reciprocal entity until it is made clear that the CMP is the governing document for the seam between MISO and Western with respect to all aspects contained in the CMP and that the contract path limit will not limit forward, day-ahead, or real time operations.⁵⁰

27. Xcel suggests that sections 5.4-5.6 of the proposed Western-SPP JOA be replaced with section 5.2 of the MISO-SPP JOA to provide for contract path capacity sharing.⁵¹ Barring that, Xcel argues that if Western desires coordination with MISO, it should be required to use MISO Seams Service.

4. Manitoba Hydro's Protest

28. Manitoba Hydro argues that the Petition should be rejected because the proposed Western-SPP JOA is not a "reciprocal coordination agreement" as defined in section 2.2.43 of the MISO-SPP JOA.⁵² Manitoba Hydro claims that the proposed Western-SPP JOA is not a reciprocal coordination agreement because it departs significantly from MISO's standard CMP in such areas as the treatment of parallel flows, the sharing of transmission capacity, and restrictions on the reservation of transmission service.

⁴⁹ Xcel May 24, 2012 Protest in Docket No. EL12-60-000 at 1, 5-6.

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 4.

⁵² Manitoba Hydro May 24, 2012 Protest in Docket No. EL12-60-000 at 3-4.

5. Associated Electric's Comments

29. Associated Electric supports the Petition,⁵³ agreeing with Petitioners' assertion that coordinated flowgate allocations and congestion management practices are essential elements of interregional coordination. Associated Electric states that section 6.1 of the MISO-SPP JOA obligates the parties to respect the allocations defined by the CMP, and section 6.2 of the CMP provides for allocations between two reciprocal entities that have executed reciprocal coordination agreements with at least one of the two reciprocal entities to the agreement. Associated Electric maintains that these provisions obligate MISO and SPP to honor each other's flowgates with third parties. Associated Electric states that granting the Petition would strengthen interregional coordination, would make execution of reciprocal coordination agreements more attractive, and would enhance the reliability and efficiency of the transmission grid.⁵⁴

6. Petitioners' Answer

30. Petitioners answer that MISO has misread the MISO-SPP JOA and the CMP contained in it.⁵⁵ Specifically, Petitioners argue that section 6.1 of the MISO-SPP JOA provides that each party will respect the other party's allocations on all reciprocal coordinated flowgates, not merely the allocations on reciprocal coordinated flowgates between the two parties.⁵⁶ Petitioners also claim that MISO misinterprets the meaning of

⁵³ Associated Electric May 24, 2012 Comments in Docket No. EL12-60-000 at 3.

⁵⁴ *Id.* at 4.

⁵⁵ SPP and Western June 12, 2012 Answer in Docket No. EL12-60-000 at 4-5.

⁵⁶ Section 6.1 of the MISO-SPP JOA states, in relevant part:

[Each] Party agrees to respect the allocations defined by the allocation process set forth in the Congestion Management Process. The Parties will establish and finalize the process and timing for exchanging their respective AFC calculations and Firm Flow calculations/allocations with respect to all [reciprocal coordinated flowgates].

the diagram in section 6.2 of the CMP, because the text of the section⁵⁷ specifies that flowgates between parties that do not have a reciprocal coordination agreement are considered reciprocal coordinated flowgates when those parties have a reciprocal coordination agreement with the same third party. Petitioners also point to the MISO-SPP JOA's definitions to support their claim that Western and MISO are "reciprocal entities," the Western flowgates with MISO are "reciprocal coordinated flowgates," and the proposed Western-SPP JOA is a "reciprocal coordination agreement."

31. Petitioners also maintain that the parties' treatment of flowgates with third parties as reciprocal coordinated flowgates is not voluntary, as section 6.1 of the MISO-SPP JOA states that each party "agrees" to it, and section 6.2 of the CMP states that the flowgates "will be considered" reciprocal coordinated flowgates.⁵⁸ Petitioners also claim that interpreting the reciprocal treatment to be voluntary would harm system reliability, creating chaos that could destroy the CMP.

32. Petitioners also challenge MISO's procedural arguments for rejecting the Petition. Petitioners state that SPP did not invoke the dispute resolution procedures under the MISO-SPP JOA, because MISO made clear in a letter dated February 27, 2012, in a meeting with Petitioners on February 28, 2012, and in its decision to suspend Seams Service to other Seams Service customers whose flowgate allocations are aggregated with Western's flowgate allocations, that MISO would not treat Western's flowgates as reciprocal coordinated flowgates based on Western entering into the proposed Western-SPP JOA. Petitioners state that MISO's adamantness indicated that further discussions would not narrow the scope of the dispute, and thus, under the rationale adopted in the Capacity Sharing Order, the Commission would not require further dispute resolution procedures.⁵⁹ In addition, Petitioners point out that Western is not subject to the MISO-SPP JOA and its dispute resolution provisions.

⁵⁷ Section 6.2 of the CMP, titled "Reciprocal Coordinated Flowgates," sets out three criteria for a flowgate to be considered a reciprocal coordinated flowgate between two entities: (1) it must meet the criteria for a "coordinated flowgate" (which the MISO-Western flowgates do), (2) it must be under the functional control of one of the two entities, and (3) "Both Reciprocal Entities have executed Reciprocal Coordination Agreements either with each other or with a third party Reciprocal Entity. . . ."

⁵⁸ *Id.* at 8-9.

⁵⁹ *Id.* at 11-12 (citing Capacity Sharing Order, 136 FERC ¶ 61,010 at P 66).

33. Petitioners also dispute the claims of MISO and MISO Transmission Owners that the Petition is incomplete because it does not contain certain implementation specifics.⁶⁰ Petitioners explain that the Petition seeks Commission confirmation as to contract interpretation, not as to contract implementation. Petitioners add that implementation questions are not of concern anyway, because implementation would mean returning to the coordination that occurred previously.⁶¹ Petitioners also argue that the Commission should dismiss MISO Transmission Owners' argument that the Petition should be rejected because it would force a non-party, MISO, to comply with the proposed Western-SPP JOA. Petitioners assert that the Petition does not seek to require MISO to comply with the proposed Western-SPP JOA, but to comply with the MISO-SPP JOA, to which MISO is a party.⁶²

34. Petitioners also answer MISO's claim that the proposed Western-SPP JOA is incompatible with the CMP. Petitioners state that the proposed Western-SPP JOA (especially sections 5.4-5.6) addresses the contract path limitations on the rights of the parties to grant transmission service, whereas the CMP addresses flowgate allocations based on historical usage, to "recognize and coordinate permissible loop flow on a neighbor's system."⁶³ Petitioners state that MISO misunderstands sections 5.4-5.6, which only apply to SPP and Western and their respective transmission owners, do not provide for compensation beyond what applies under their respective tariffs, and do not require arrangements for loop flows resulting from transmission within their contract path capacity. Petitioners assert that sections 5.4-5.6 of the proposed Western-SPP JOA make explicit the respect for contract path capacity rights that is common practice in the Eastern Interconnection, in the absence of capacity sharing provisions such as section 5.2 of the MISO-SPP JOA.⁶⁴

35. Petitioners also assert that MISO and Xcel, in arguing sections 5.4-5.6 of the proposed Western-SPP JOA are incompatible with the CMP, overlook that the MISO-SPP JOA's capacity sharing provision, section 5.2, also affects the usage of the system under the CMP, but in different ways.⁶⁵ Petitioners argue that if the capacity sharing

⁶⁰ *Id.* at 12-14.

⁶¹ *Id.* at 13.

⁶² *Id.* at 14.

⁶³ *Id.* at 15.

⁶⁴ *Id.* at 15-16.

⁶⁵ *Id.* at 16-17.

provision in the MISO-SPP JOA was not deemed to conflict with the CMP, then the capacity limiting provision in the proposed Western-SPP JOA should also not be deemed to conflict with the CMP. Regarding Manitoba Hydro's argument that the proposed Western-SPP JOA "departs from the Standard CMP," Petitioners argue that Manitoba Hydro fails to recognize that the only difference between the MISO-SPP JOA and the proposed Western-SPP JOA is in their respective capacity limit provisions. Petitioners emphasize that the CMP does not grant contract path sharing, and that sufficient contract path capacity rights on one's own system are a condition for the use of the CMP, if the parties have not otherwise agreed to share contract path capacity.⁶⁶ Petitioners also assert that the claim that agreements to respect contract path capacity rights conflict with the CMP is inconsistent with MISO's having entered into agreements that contained contract path capacity limitations, including the limitations in section 5.1.10 of the MISO-MAPP SOA, and MISO Seams Service prior to MISO's insertion of the capacity sharing provision.⁶⁷

36. Petitioners also challenge MISO's claim that granting the Petition will allow Western to obtain Seams Service benefits without any resulting obligation or benefit to MISO. Petitioners point out that Western will be obligated to abide by the CMP, including the obligation to honor MISO's flowgates as reciprocal coordinated flowgates, which will benefit MISO. Petitioners argue that MISO Seams Service is more than implementation of the CMP, and MISO's offering Seams Service does not preclude MISO from having to honor other obligations MISO may have to treat flowgates as reciprocal coordinated flowgates.⁶⁸ Petitioners maintain that merely because an entity must be interconnected to MISO to be eligible for MISO Seams Service, that does not mean that an entity that is interconnected to MISO must take MISO Seams Service.⁶⁹

37. Petitioners aver that the proposed Western-SPP JOA will not affect the operation of the MISO-SPP JOA. Petitioners confirm that SPP will honor the obligation to share contract path under section 5.2 of the MISO-SPP JOA, as applied to Entergy Arkansas if Entergy Arkansas joins MISO, subject only to resolution of SPP's appeal of that finding to the D.C. Circuit.⁷⁰ Petitioners maintain that the MISO-SPP JOA does not require SPP

⁶⁶ *Id.* at 18.

⁶⁷ *Id.* at 19.

⁶⁸ *Id.* at 20.

⁶⁹ *Id.* at 21-22, 27.

⁷⁰ *Id.* at 21.

to provide for contract path sharing with third parties. Petitioners also note that MISO is the only North American utility that imposes set terms and conditions for seams coordination, rather than negotiating the terms and conditions for coordination individually.⁷¹

38. Petitioners also urge the Commission to dismiss MISO's argument that granting the Petition would be unduly discriminatory to MISO Seams Service customers that are not interconnected to SPP and thus cannot obtain reciprocal flowgate coordination with MISO by entering into a reciprocal coordination agreement with SPP. Petitioners argue that these customers' situation is different from Western's in that they are taking Seams Service and have not proposed entering into an agreement with SPP.⁷²

7. MISO's Answer

39. MISO asserts that the Petition should be rejected because the issue of whether MISO treats Western flowgates as reciprocal coordinated flowgates does not affect reliability.⁷³ MISO asserts that the main effect is an economic benefit to Western, because under the CMP parties respect, for curtailment, each other's firm historical entitlements or allocations on the reciprocal coordinated flowgates rather than curtailing *pro rata*, as under TLRs. MISO also reiterates its arguments that sections 5.4-5.6 restrict contract path capacity use, which is contrary to the goal of maximizing transmission capacity use, and therefore the proposed Western-SPP JOA is not a reciprocal coordination agreement, even if it meets the specific definition for reciprocal coordination agreements in the MISO-SPP JOA.

40. MISO also claims that section 6.1 of the CMP provides only for voluntary, not mandatory, recognition of reciprocal coordinated flowgates of parties that have entered into reciprocal coordination agreements with another party, in that it states that operating entities "may agree" to respect each other's flowgate limitations, and states that "Entities agreeing to coordinate" in such a way are reciprocal entities.⁷⁴ MISO claims that the third criterion for reciprocal coordinated flowgates in section 6.2 of the CMP ("Both Reciprocal Entities have executed Reciprocal Coordination Agreements either with each other or with a third party Reciprocal Entity") merely describes how two reciprocal

⁷¹ *Id.* at 26.

⁷² *Id.* at 27.

⁷³ MISO June 27, 2012 Answer in Docket No. EL12-60-000 at 2.

⁷⁴ *Id.* at 6.

entities designate reciprocal coordinated flowgates, but it does not make Western a reciprocal entity with MISO.

41. Finally, MISO argues that the Petition should be dismissed because the CMP may provide for coordination between parties that are not interconnected, but parties that are interconnected should have a proper seam management arrangement.⁷⁵ MISO argues that granting the Petition would destroy the uniformity of seam management and would allow Western to manipulate the provisions of the CMP.

8. MISO Transmission Owners' Answer

42. MISO Transmission Owners argue that granting the Petition and accepting the proposed Western-SPP JOA will affect transmission owners and their customers across MISO, without their having been included in the negotiations.⁷⁶ MISO Transmission Owners argue that the Petition is an attempt to evade the capacity sharing provision in MISO Seams Service, and is not an adequate replacement for Seams Service. MISO Transmission Owners argue that while MISO treats the flowgates of TVA as reciprocal coordinated flowgates without having a reciprocal coordination agreement in place, TVA is not similarly situated to Western. MISO Transmission Owners also point to the large number of affected flowgates that will be affected if the Petition is granted. MISO Transmission Owners assert that the capacity sharing provision that is absent from the proposed Western-SPP JOA has been found to be just and reasonable as a “standard feature” in MISO Seams Service and MISO’s JOAs, and that systems that are interconnected with MISO should obtain seams coordination from MISO through “non-discriminatory” Seams Service.⁷⁷

B. Discussion

1. Procedural Matters

43. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the

⁷⁵ *Id.* at 7.

⁷⁶ MISO Transmission Owners June 27, 2012 Answer in Docket No. EL12-60-000 at 6-7.

⁷⁷ *Id.* at 8.

Commission will grant Southwestern's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

44. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by SPP, MISO, and MISO Transmission Owners because they have provided information that assisted us in our decision-making process

2. Commission Determination

45. We grant the Petition for Declaratory Order as discussed below. We find that the CMP requires reciprocity with third parties that have entered into reciprocal coordination agreements with one or more of the parties to a reciprocal agreement. Because Western and MISO both have reciprocal coordination agreements with SPP (the Western-SPP JOA, as conditionally accepted below, and the existing MISO-SPP JOA), we find that MISO must treat its flowgates with Western as reciprocal coordinated flowgates.

46. We find that the CMP provides that parties that do not have reciprocal coordination agreements with each other but have reciprocal coordination agreements with a third party must treat their flowgates with each other as reciprocal coordinated flowgates. Section 6.2 of the CMP specifies the following criteria as necessary for flowgates to be considered reciprocal coordinated flowgates: (1) that the flowgates be coordinated flowgates; (2) that they be under the functional control of one of the two reciprocal entities; and (3) that the two reciprocal entities have executed reciprocal coordination agreements "either with each other or with a third party Reciprocal Entity." Because MISO and Western have both executed reciprocal coordination agreements with SPP (i.e., the MISO-SPP JOA and the proposed Western-SPP JOA), the flowgates between MISO and Western meet the criteria for reciprocal coordinated flowgates, and MISO must treat them as such.

47. We find MISO's interpretation of the diagram in section 6.2 of the CMP to be incorrect. MISO claims that flowgates must be affected by all three systems in order to be considered reciprocal coordinated flowgates for a party (e.g., Western) and a third party (e.g., MISO). However, we find that flowgates between two systems are reciprocal coordinated flowgates for a party and a third party. The text accompanying the diagram posits three operating entities, A, B, and C, that have entered into reciprocal coordination agreements with one or both of the other two operating entities, to illustrate which flowgates are reciprocal coordinated flowgates only among any pairing of two of the three operating entities, as opposed to which flowgates are reciprocal coordinated flowgates among all three:

Where those sets of Coordinated Flowgates overlap AND they are in either Operating Entity A's [e.g., Western's] or Operating Entity B's [e.g., MISO's] service territory (the purple area), they will be considered Reciprocal Coordinated Flowgates between Operating Entity B [e.g., MISO] and Operating Entity A [e.g., Western] only.

48. In addition, the MISO-SPP JOA's definitions for the relevant terms expressly apply to third party operating entities that have entered into reciprocal coordination agreements with one or more of the parties to the agreement, as shown in italics below:

2.2.44 "Reciprocal Coordinated Flowgate(s)" shall mean a Flowgate that is subject to reciprocal coordination by Operating Entities, under . . . a Reciprocal Coordination Agreement *between one or more Parties and one or more Third Party Operating Entities*. A [Reciprocal Coordinated Flowgate] is: . . . A Coordinated Flowgate that is (a) affected by the transmission of energy *by one or more Parties and one or more Third Party Operating Entities, and (b) expressly made subject to Congestion Management Process reciprocal coordination procedures under a Reciprocal Coordination Agreement between or among such Parties and Third Party Operating Entities*. . . .

2.2.45 "Reciprocal Entity" shall mean *any entity* that coordinates the future-looking management of Flowgate capability in accordance with a reciprocal agreement as described in the Congestion Management Process.

2.2.39 "Operating Entity" shall mean an entity that operates and controls a portion of the bulk transmission system with the goal of ensuring reliable energy interchange between generators, loads, and other operating entities.

2.2.54 "Third Party Operating Entity" shall refer to a Third Party entity that operates and controls a portion of the bulk transmission system with the goal of ensuring reliable energy interchange between generators, loads, and other operating entities.

We agree with Petitioners that under these definitions, operating entities that do not have reciprocal coordination agreements directly with each other are reciprocal entities if they have reciprocal coordination agreements with other entities that have entered into reciprocal coordination agreements.

49. MISO argues that the Petition should be rejected because the proposed Western-SPP JOA is not yet accepted, and should not be accepted. As discussed below, we will conditionally accept the proposed Western-SPP JOA, and therefore we reject this argument. MISO also argues that SPP has not initiated dispute resolution procedures, as

required under the MISO-SPP JOA, for any dispute. We reject this argument, because the parties have engaged in communications over their differences in interpreting the contract, with no progress toward resolution, and there is no evidence that further efforts would benefit the parties or the Commission.⁷⁸

50. MISO also argues that the Petition leaves out relevant facts. However, we find that the Petition contains sufficient facts for us to render a determination on the merits. MISO also argues that sections 5.4-5.6 of the proposed Western-SPP JOA conflict with the CMP, and therefore the proposed Western-SPP JOA does not qualify as a reciprocal coordination agreement. We disagree. The MISO-SPP JOA and the proposed Western-SPP JOA both define “reciprocal coordination agreement” as an agreement that implements the CMP. The proposed Western-SPP JOA implements the CMP and therefore it is a reciprocal coordination agreement.

51. Also unavailing is MISO’s argument that if the proposed Western-SPP JOA does qualify as a reciprocal coordination agreement, it does not cover the Western-MISO flowgates as reciprocal coordinated flowgates, comparable to MISO Seams Service. We find that under section 6.2 of the CMP and the definitions in the implementing provisions of the MISO-SPP JOA, the Western-MISO flowgates do qualify as reciprocal coordinated flowgates between MISO and Western. We disagree with MISO’s assertion that granting the Petition amounts to revising the CMP and the MISO-SPP JOA. We are not revising the MISO-SPP JOA or the CMP it implements; rather we are interpreting it. Petitioners request confirmation of an interpretation and we grant that request.

52. As for MISO’s and MISO Transmission Owners’ argument that granting the Petition would allow Western to obtain seams coordination benefits from MISO while avoiding reciprocal obligations to MISO with respect to contract path capacity sharing, we agree. However, we do not find this to be a collateral attack on Commission findings in the Capacity Sharing Order and the MISO Seams Service Order. In the Capacity Sharing Order, we interpreted the capacity sharing provision of the MISO-SPP JOA and found that SPP was bound by the provision because SPP had agreed to the provision in entering into the MISO-SPP JOA. In the MISO Seams Service Order, we found that the capacity sharing provision was acceptable because it had been accepted previously, was consistent with the CMP, and customers did not have to take Seams Service. However, we did not state in either the Capacity Sharing Order or the MISO Seams Service Order

⁷⁸ *See, e.g.*, Capacity Sharing Order, 136 FERC ¶ 61,010 at P 66 (finding that dispute resolution provision of MISO-SPP JOA was satisfied by evidence that the parties had attempted to resolve the dispute and that further attempts would be fruitless).

that the capacity sharing was required for all reciprocally coordinating parties. As Petitioners point out, we have accepted agreements that do not require capacity sharing.⁷⁹

53. MISO also asserts that granting the Petition will give Western preferential treatment compared to those customers who use MISO Seams Service but who cannot enter into seams agreements with SPP because they do not interconnect with SPP. This assertion is misplaced. MISO is in effect stating that Western is not allowed to take advantage of the third party reciprocity in the CMP, which is available to parties who have a seam with an entity willing to enter into a reciprocal coordination agreement with them. Seams Service customers can enter into agreements with any willing entity with which they have a seam. Because a Seams Service customer may only have a seam with MISO or another party that is not willing to offer reciprocal coordination of flowgates except with capacity sharing does not make the third party reciprocity provision of the CMP unduly discriminatory.

54. We acknowledge that the practical effect of granting the Petition (and conditionally accepting the Western-SPP JOA as discussed below) is that MISO must honor flowgate limits with Western without the offsetting benefit to MISO of contract path sharing that MISO requires of entities that take Seams Service directly from MISO. Western will receive the facet of MISO Seams Service that Western desires, requiring MISO to redispach the generation in its market to respect the flowgate limits, without Western assuming the other attendant obligations of MISO Seams Service. However, when MISO entered into the MISO-SPP JOA, MISO agreed to its terms and conditions, including the definitions and section 6.2 of the CMP.

55. We reject MISO's argument that the third party reciprocity provided for in section 6.2 of the CMP applies only to a third party that is not interconnected to the party. Section 6.2 does not require that the third party not be interconnected to the party.⁸⁰ MISO also argues that the definition of "eligible customer" in MISO Seams Service states that the entity must be interconnected with MISO, and that therefore because Western is interconnected with MISO, Western can only receive reciprocal flowgate

⁷⁹ *See infra* P 102.

⁸⁰ Likewise, the definition of Reciprocal Coordination Agreement in section 2.2.43 of the MISO-SPP JOA (quoted *supra* n.10) and the identical definition in section 2.2.32 of the Western-SPP JOA do not require that the third party not be interconnected to the party. In addition, the definition of Reciprocal Coordinated Flowgate(s) in section 2.2.44 of the MISO-SPP JOA (quoted *supra* P 48) and the identical definition in section 2.2.33 of the Western-SPP JOA do not require that the third party not be interconnected to the party.

coordination with MISO through MISO Seams Service. However, we disagree. MISO Seams Service's definition of eligible customer simply means that entities that are not interconnected with MISO are not eligible customers; it does not mean that an entity that is interconnected to MISO must be a MISO Seams Service customer. Petitioners are not "pretending" that Western is not eligible for MISO Seams Service, they are rather seeking confirmation that section 6.2 of the CMP provides an alternative avenue for receiving reciprocal flowgate coordination. MISO entered into the MISO-SPP JOA and is bound by its provisions, including the definitions and section 6.2 of the CMP.

56. We deny Petitioners' request for waiver of the requirement to include a filing fee with the Petition. Section 207(c) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.207(c) (2012), requires that a Petition for Declaratory Order be accompanied by a filing fee. Section 108(a) of the Commission's regulations, 18 C.F.R. § 381.108(a) (2012), provides an exemption from the filing fee for states, municipalities, or entities engaged in the official business of the United States. Western and Heartland are thus exempt from the filing fee requirement as, respectively, an entity engaged in the official business of the United States, a political subdivision of the State of South Dakota, and a non-public utility.⁸¹ However, the Commission does not recognize a general exemption for non-public utilities,⁸² or for regional transmission organizations or other non-profit entities.⁸³ Therefore we find that Basin and SPP are not exempt from the filing fee requirement, and we deny the requested waiver. Petitioners must submit the filing fee within 30 days of the date this order issues, as they state they will do if waiver is denied.

⁸¹ See, e.g., *Western*, 133 FERC ¶ 61,193 at P 9; *CPUC*, 132 FERC ¶ 61,047 at P 11.

⁸² In *Big Rivers*, the case cited by Petitioners to support waiver for non-public utilities, the Commission found the non-public utility to be exempt from the filing fee requirement under the Commission's specific extension of the section 108(a) exemption to non-public utilities filing "safe harbor" reciprocity tariffs. See *Big Rivers*, 128 FERC ¶ 61,264 at P 109.

⁸³ Any entity may apply under section 106 of the Commission's regulations, 18 C.F.R. § 106 (2012), for a need-based waiver of the filing fee, but this requires submission of evidence that payment of the fee would place the entity in "financial distress or emergency." Basin and SPP have not filed for such a waiver.

III. Western-SPP JOA

57. On April 20, 2012, SPP filed the proposed Western-SPP JOA.⁸⁴ The proposed Western-SPP JOA implements and attaches the CMP. SPP states that the Western-SPP JOA provides for coordination of data exchange, planning, scheduling, and other aspects of transmission operations. SPP explains that the JOA will improve communication, engineering, coordination, planning and cooperation between the SPP and Western transmission systems. According to SPP, the CMP provides significant detail in the area of market flow calculation, and seeks to significantly enhance current interchange granularity by utilizing existing real-time applications to monitor and react to flowgates, and to address reliability aspects of congestion management seams issues between all parties to the CMP.

58. The Western-SPP JOA's implementing provisions contain no capacity sharing provision. Instead, under sections 5.4-5.6 of the Western-SPP JOA, SPP and Western agree to limit energy exchanges to their respective contract path capacities; i.e., it contains an agreement to *not* share contract path capacity. The limitation applies to energy exchanges with each other and with third parties.⁸⁵ Energy deliveries in excess of

⁸⁴ The Western-SPP JOA is designated as Southwest Power Pool, Inc., FERC FPA Electric Tariff, Rate Schedules and Seams Agreements Tariff, [Rate Schedule 13 WAPA JOA, Rate Schedule 13 - Western Area Power Administration JOA, 0.0.0](#), [Rate Schedule - Att. 1, Rate Schedule 13 - Attachment 1, 0.0.0](#), [Rate Schedule 13 - Att. 2, Rate Schedule 13 - Attachment 2, 0.0.0](#).

⁸⁵ For example, proposed section 5.6 (as revised in SPP's response to Commission staff's deficiency letter, *see infra* P 91) provides in relevant part:

5.6 Usage of Contract Path Capacity with Third Parties

5.6.1. General Terms of Use. Each Party agrees to limit its energy exchange with a Third Party to its Contract Path capacity with that Third Party and subject to the appropriate additional transmission service being reserved in accordance with the Party's and Third Party's tariffs. For purposes of this section, the total amount of Contract Path capacity between a Party and Third Parties shall be limited to:

1. The sum of capacity of all direct interconnections between the Party and Third Party; and
2. Any contractual transmission agreements that provide Contract Path capacity between the Party and Third Party.

(continued...)

the parties' respective contract path capacities require transmission service reservations under the parties' tariffs and third parties' tariffs.

59. Pursuant to section 35.11 of the Commission's regulations, 18 C.F.R. § 35.11 (2012), SPP requests waiver of the Commission's 60-day notice requirement as set forth in section 35.3(a) of the Commission's regulations, 18 C.F.R. § 35.3(a) (2012), so that the Western-SPP JOA may become effective April 30, 2012. SPP argues that waiver is appropriate because both parties have agreed to the effective date, and because the Western-SPP JOA has no rate impact.

A. Notice of Filing and Responsive Pleadings

60. Notice of SPP's Filing of the proposed Western-SPP JOA was published in the *Federal Register*, 77 Fed. Reg. 27,222 (2012), with motions to intervene or protests due on or before May 11, 2012. Timely motions to intervene were filed by American Electric Power Service Corp.; NPPD; Ameren Energy Marketing; Missouri River Energy Services; and Tatanka. In addition, Exelon filed a late-filed motion to intervene on May 16, 2012.

61. Timely motions to intervene and protest were filed by MISO and Xcel (on behalf of SPS). Timely motions to intervene and comments were filed by MISO Transmission Owners,⁸⁶ Western, Heartland, and Basin. SPP and Western filed an answer to the protests and MISO Transmission Owners' comments on May 29, 2012. MISO filed an answer on June 12, 2012. SPP and Western filed an answer to MISO on June 15, 2012.

5.6.2. Excess Use. Energy deliveries in excess of the total amount of Contract Path capacity, as limited by Section 5.6.1, between a Party and a Third Party shall require transmission service reservations from one or more other Transmission Service Providers that have sufficient Contract Path capacity to the Third Party to facilitate the delivery or exchange. Compensation for such service shall be in accordance with the applicable Transmission Service Providers' tariffs.

⁸⁶ In this filing, MISO Transmission Owners are the same entities as in the Protest to the Petition (*see supra* n. 30), with the addition of Northern States Power Co., a Minnesota Corporation, and Northern States Power Co., a Wisconsin Corporation, subsidiaries of Xcel Energy Inc.

1. MISO's Protest

62. MISO contends that the proposed Western-SPP JOA is unjust and unreasonable. First, MISO argues that SPP's Filing is procedurally deficient in that the transmittal letter does not address the non-conforming and far-reaching aspects of the proposed Western-SPP JOA. In particular, MISO alleges that sections 5.4-5.6 of the proposed Western-SPP JOA impose charges on customers and provide for loop flow compensation, but these charges, particularly by Western, are not part of any RTO formula rate, and the loop flow compensation has not been determined by the Commission to be just and reasonable under Commission loop flow compensation precedent.⁸⁷ MISO argues that SPP has not provided support for the rate changes, and has not sought a waiver of the FPA section 205 requirement that rate changes be supported; therefore, the filing should be rejected as patently deficient under section 35.5 of the Commission regulations, 18 C.F.R. § 35.5 (2012). MISO further contends that, even if SPP requested such waiver, waiver should not be granted because the filing does not pose an emergency or reliability issue, just economic and efficiency issues. MISO adds that even if there were an emergency, it is self-inflicted in that SPP and Western opted for a last-minute filing to address an issue that arose in 2008 when the Nebraska entities (NPPD, Omaha Public Power District, and Lincoln Electric System) joined SPP, creating the seam between Western and SPP.⁸⁸

63. In addition, MISO claims that sections 5.4-5.6 are unjust and unreasonable because they impermissibly limit the availability of transmission service in SPP and condition its provision on the payment of unauthorized loop flow charges. MISO asserts that an entity may only charge for loop flow if the entity shows that loop flow jeopardizes reliability or diminishes the entity's "ability to utilize its system in the most economical manner,"⁸⁹ which SPP and Western have not shown.

64. MISO notes that SPP did not enter into a JOA with the Nebraska entities when they joined SPP. MISO alleges that SPP is proposing the SPP-Western JOA because in the Capacity Sharing proceeding, SPP failed to persuade the Commission that parallel flows should be compensated.⁹⁰ MISO also notes that Western's MISO Seams Service agreement coordinated 20 GW of interconnection capacity, while the proposed Western-

⁸⁷ MISO May 11, 2012 Protest in Docket No. ER12-1586-000 at 7.

⁸⁸ *Id.* at 12.

⁸⁹ *Id.* at 15 (citing *American Electric Power Services Corp.*, 93 FERC ¶ 61,151, at 61,474 (2000) (*AEP*)).

⁹⁰ *Id.* at n.28.

SPP JOA coordinates only 4 GW of interconnection capacity.⁹¹ MISO points out that SPP and Western are required to demonstrate that sections 5.4-5.6 are consistent with or superior to the Commission's *pro forma* OATT, but they have failed to do so. MISO alleges that under sections 5.4-5.6, Western and SPP are agreeing to deny transmission service to their customers when the limits in sections 5.4-5.6 are reached. MISO claims that such an agreement revises their respective OATTs, which would require both Western and SPP to file corresponding OATT revisions, which they have failed to do. MISO also claims that sections 5.4-5.6 conflict with Commission precedent on third party transmission availability in the context of roll-overs,⁹² and Commission precedent on restricting service based on changes in loop flows.⁹³ MISO asserts that under section 5.5, customers will see their transmission service limited on the SPP system unless they pay Western for transmission service to transmit their loop flows, even if a majority of the flows occur in a third party neighboring system. MISO claims that Western and SPP have failed to justify charging a customer the full tariff rate for loop flow service when flows from a transaction may be occurring on other systems, with no demonstration that Western (or Heartland or Basin) has been impaired or inconvenienced by the use of the system.

65. MISO claims that SPP and Western have not explained how loop flows will be determined, how much transmission service will be required to be purchased to meet the restrictions in the proposed Western-SPP JOA, how such transmission service can be acquired, or how existing transmission service will be affected.⁹⁴ MISO raises numerous other questions about how sections 5.4-5.6 will apply in practice.⁹⁵

66. MISO also alleges that the proposed Western-SPP JOA, in rejecting capacity sharing, violates the Commission's directive in Order No. 1000 that planners consider

⁹¹ *Id.*

⁹² *Id.* at 13 (citing *Commonwealth Edison Co.*, 95 FERC ¶ 61,252, at 61,875 (2001) (*ComEd*), *reh'g denied*, 96 FERC ¶ 61,158 (2001)).

⁹³ *Id.* at 14 (citing *Associated Electric Cooperative, Inc. v. Southwest Power Pool, Inc.*, 115 FERC ¶ 61,213, at P 17 (2006) (*Associated Electric*), *reh'g denied*, 117 FERC ¶ 61,114 (2006); *Exelon Generation Co., LLC v. Southwest Power Pool, Inc.*, 99 FERC ¶ 61,235 (2002) (*Exelon*)).

⁹⁴ *Id.* at 16-18.

⁹⁵ *Id.* at 18-19.

public policy requirements.⁹⁶ Specifically, MISO alleges that sections 5.4-5.6 are a direct response to a situation in which a wind generator in MISO has been informed by Western that it must reserve service on the Integrated System during certain outage conditions, rather than rely on loop flow, even though such service is a financially unacceptable risk for the wind generator. MISO claims that the contract path limits would render SPP and Western planners unable to respond to the public policy considerations presented by intermittent resources.

67. MISO claims that the limits in sections 5.4-5.6 are unclear, particularly the use of the terms “and/or” in describing the two components of contract path capacity.⁹⁷ MISO also claims that SPP must explain how in SPP’s planned Day 2 Integrated Marketplace,⁹⁸ SPP would effect energy market dispatch under the constraint presented by the limitations set in sections 5.4-5.6. MISO claims the proposal does not indicate whether the need for off-system transmission service will be at the behest and cost of the customer or whether SPP will arrange for and socialize the cost of such service. MISO also argues that the limitations negatively affect SPP’s ability to negotiate with MISO over the terms of the MISO-SPP JOA regarding Entergy Arkansas’s integration, and to work toward a joint and common market to reduce inefficiencies at the SPP and MISO seam.

68. MISO also argues that the MISO-SPP JOA and other congestion management agreements all have as a “core assumption” that they must increase, rather than limit, the level of coordination, and must manage congestion to improve the overall system efficiency. MISO claims that agreements implementing the CMP (i.e., reciprocal coordination agreements) cannot restrict transmission service available to customers or impose additional costs on them, because such restrictions would be fundamentally

⁹⁶ *Id.* at 19.

⁹⁷ *Id.* at 20. As originally proposed, the total amount of contract path capacity was defined as “1. The sum of capacity of all direct interconnections between the Party and Third Party; and/or 2. Any contractual transmission agreements that provide Contract Path capacity between the Party and Third Party.” MISO notes that “and/or” is ambiguous because “and” would require adding the two components, whereas “or” would require taking one or the other of the two components.

⁹⁸ SPP’s Integrated Marketplace proposal is pending before the Commission in Docket No. ER12-1179-000. MISO filed a protest in that docket, arguing that the proposed Western-SPP JOA conflicts with the Integrated Marketplace proposal, and, if the Western-SPP JOA was accepted, SPP should be required to modify the Integrated Marketplace.

inconsistent with the CMP. MISO claims that the proposed Western-SPP JOA conflicts with this core assumption and “turns the whole idea of a JOA inside out.”

69. MISO argues that the capacity limits in sections 5.4-5.6 of the proposed Western-SPP JOA conflict with the capacity sharing provision (section 5.2) of the MISO-SPP JOA, and would limit SPP’s exchanges with MISO to the aggregate amount of their direct interconnections and/or their contractual transmission agreements. MISO states that this will require MISO to obtain transmission service under the SPP or WAPA OATT to effectuate such exchanges. MISO claims that section 5.6 “has no purpose other than restricting capacity sharing between SPP and MISO” and is thus a collateral attack on the Capacity Sharing Order. In addition, MISO alleges that the proposed Western-SPP JOA will alter MISO’s rights under the MISO-SPP JOA, and is thus an unauthorized revision of the MISO-SPP JOA.⁹⁹ MISO also argues that sections 5.4-5.6 conflict with the CMP, in that the limits in sections 5.4-5.6 conflict with the CMP’s flow-based management of congestion between neighboring systems, with one key goal being to maximize the use of existing transmission capacity.¹⁰⁰

2. Xcel’s Protest

70. Xcel believes the capacity limitations in sections 5.4-5.6 of the proposed Western-SPP JOA result in different operations than the CMP operations.¹⁰¹ Xcel argues that the proposed Western-SPP JOA does not clearly state that the CMP is the controlling document for identifying flowgates, allocating capacity, and managing flowgates for day-ahead and real-time operations, and does not specify when the contract limitations described in sections 5.4-5.6 will take precedence over the CMP. Therefore, Xcel contends that the proposed Western-SPP JOA should be revised to indicate that the CMP is the controlling document, and to identify the specific circumstances under which sections 5.4-5.6 will take precedence over the CMP. Xcel states that without these clarifications, the proposed Western-SPP JOA could artificially limit the use of the transmission system by operating to the most limiting transmission entitlement between those granted under the contract path methodology and those granted under the CMP. It could also result in a less reliable system, according to Xcel.

71. Xcel also asks that the Commission confirm that for neighboring systems, the CMP grants rights equivalent to transmission service rights for flows across the

⁹⁹ *Id.* at 24.

¹⁰⁰ *Id.* at 25-26.

¹⁰¹ Xcel May 11, 2012 Protest in Docket No. ER12-1586-000 at 3-4.

flowgates, as well as any loop flow associated with such flows; that these rights in turn represent payment-in-kind for the use of the neighbor's system; and that entities adhering to the CMP do not need to obtain transmission service from the neighboring system for generation-to-load impacts managed under the CMP.¹⁰² Xcel asserts that for entities adhering to the CMP, further compensation is not required beyond the in-kind payment, as requiring entities to purchase excess transmission service would constitute a double payment and would not impact actual real-time operations. Xcel claims that sections 5.4-5.6 of the proposed Western-SPP JOA limit the available transmission, dismissing the rights granted under the CMP and the payment-in-kind concept in the CMP, and thus may be unjust and unreasonable by allowing SPP and Western to arbitrarily choose between applying the rights granted under the CMP and requiring further compensation.¹⁰³ Xcel notes that the North Dakota contract path process for congestion management illustrates the conflict between the contract path approach and the CMP, and it illustrates the potential for undermining system reliability, because with a contract path approach the reliability coordinator cannot use its real-time analysis tools to deal with actual conditions.¹⁰⁴

3. MISO Transmission Owners' Comments

72. MISO Transmission Owners argue that the proposed Western-SPP JOA is neither fair nor efficient, and that Western is using the proposed Western-SPP JOA in part to circumvent existing MISO tariff provisions that the Commission approved in the MISO Seams Service Order.¹⁰⁵ MISO Transmission Owners argue that Western's arguments in favor of the proposed Western-SPP JOA were rejected in the MISO Seams Service Order and should be rejected now.

73. MISO Transmission Owners allege that in contrast to the capacity sharing provision in the MISO-SPP JOA and MISO Seams Service, the capacity limitations in sections 5.4-5.6 of the proposed Western-SPP JOA would require a customer to obtain transmission service on both connecting systems. This would require additional payments from customers seeking to manage parallel flows.¹⁰⁶ MISO Transmission

¹⁰² *Id.* at 4-5.

¹⁰³ *Id.* at 5.

¹⁰⁴ *Id.* at 6.

¹⁰⁵ MISO Transmission Owners May 11, 2012 Comments in Docket No. ER12-1586-000, at 4.

¹⁰⁶ *Id.* at 4-5.

Owners believe this will result in decreased efficiency and diminished service under the MISO tariff.

74. MISO Transmission Owners also argue that SPP and Western have failed to explain how the proposed Western-SPP JOA will operate, how it will interact with the MISO's congestion management procedures, and how it will affect interconnected systems in terms of scheduling, congestion management, transmission service, service charges, and local and regional transmission planning.¹⁰⁷

4. Basin's Comments and Heartland's Comments

75. Basin and Heartland both state that they support the proposed Western-SPP JOA because it formalizes communications between the two neighboring regions, improving coordination and reliability.¹⁰⁸ Basin and Heartland both state that the proposed Western-SPP JOA will ensure cooperation between Western and SPP. Basin specifies that the proposed Western-SPP JOA will improve coordination through data exchange, planning, scheduling, and other aspects of transmission operations, and will improve the reliability of the bulk electric system by minimizing any adverse impacts between the two systems.

5. SPP and Western's Answer

76. SPP and Western argue that contrary to the protests and comments, sections 5.4-5.6 of the proposed Western-SPP JOA are just and reasonable, and that the Western-SPP JOA should be accepted.¹⁰⁹ SPP and Western claim that MISO and the others argue incorrectly that a reciprocal coordination agreement must provide for capacity sharing. SPP and Western argue that, while the Commission has allowed capacity sharing provisions in seams agreements and in MISO Seams Service, the Commission has not required such provisions to be included in seams agreements. SPP and Western assert that, in fact, the Commission has accepted numerous seams agreements that do not contain contract path capacity sharing provisions.¹¹⁰ SPP and Western assert that by

¹⁰⁷ *Id.* at 5.

¹⁰⁸ Basin May 11, 2012 Comments in Docket No. ER12-1586-000 at 3; Heartland May 11, 2012 Comments in Docket No. ER12-1586-000 at 3-4.

¹⁰⁹ SPP and Western May 29, 2012 Answer in Docket No. ER12-1586-000 at 3.

¹¹⁰ SPP cites, among others, the Joint Reliability Coordination Agreement (JRCA) among MISO, PJM, and TVA, and MISO's Seams Service before MISO revised it to contain the contract path capacity sharing provision.

agreeing to respect their individual contract path capacities, i.e., not to share their contract path capacity, the Western-SPP JOA reflects normal industry practice, under which a transmission provider limits sales of transmission service to its system's contract path capability.

77. SPP and Western state that the proposed Western-SPP JOA does not interfere with the rights of any third party, and specifically does not interfere with MISO's contractual rights, including MISO's rights under the capacity sharing provision (section 5.2) of the MISO-SPP JOA.

78. SPP and Western argue that the Commission should dismiss MISO's assertions that the proposed Western-SPP JOA should be rejected because it imposes charges that are unsupported, affects tariff service but does not propose tariff changes, and would provide compensation for loop flow without showing that loop flow is a problem on their systems. SPP and Western assert that the proposed Western-SPP JOA imposes no new charges and does not affect tariff service; rather, any transmission will be obtained (and charged for) under the existing tariffs.¹¹¹ SPP and Western also assert that the proposed Western-SPP JOA does not provide compensation for loop flow, but merely reflects that transmission providers must have valid contract paths with sufficient capacity to support the transmission service usage they provide.¹¹² SPP and Western state that the proposed Western-SPP JOA provides only that SPP and Western and their transmission owner members must arrange for transmission service that exceeds their contract path capacity, and it does not require that transmission service be arranged for loop flow caused by transmission service within their contract path capacity.

79. SPP and Western argue that contract path capacity is distinct from loop flow, in that contract path capacity is the physical capacity of the transmission provider's facilities and any additional contractual rights used to support the transmission service provided by the transmission provider, while loop flow is flow in accordance with the laws of physics.¹¹³ SPP and Western assert that the Commission has never required a transmission provider to accommodate another transmission provider's loop flows in excess of the first transmission provider's contract path capacity. SPP and Western maintain that sections 5.4-5.6 of the proposed Western-SPP JOA permit usage within each others' contract path capacity, and require the parties and their transmission owners to arrange for transmission service to the extent that they have insufficient contract path

¹¹¹ *Id.* at 5-6, 21.

¹¹² *Id.* at 5-6.

¹¹³ *Id.* at 7.

capacity to accommodate their energy deliveries.¹¹⁴ SPP and Western assert that the proposed Western-SPP JOA memorializes standard industry obligations and practices.¹¹⁵ SPP and Western assert that MISO acknowledged the standard nature of these obligations and practices when it sought to impose capacity sharing in MISO Seams Service.¹¹⁶ SPP and Western also point to the NDEX contract path capacity limits in section 5.1.10 of the MISO-MAPP SOA, in MISO Seams Service prior to the insertion of the capacity sharing provision, and in the System Integration Coordination Agreement between Xcel Energy Operating Companies and Western.¹¹⁷

80. SPP and Western assert that sections 5.4-5.6 of the proposed Western-SPP JOA do not limit flows or market-to-market dispatch. SPP and Western argue that in *AEP*, which MISO claims prohibits all compensation for loop flows, the Commission only addressed loop flows within the other system's contract path capacity.¹¹⁸ SPP and Western state that sections 5.4-5.6 of the proposed Western-SPP JOA comport with *AEP* in that they do not provide for compensation for loop flows within each system's contract path capacity, but only apply to loop flows in excess of contract path capacity for which no transmission service has been arranged.¹¹⁹ Similarly, SPP and Western note that *Associated Electric* and *Exelon*, which MISO cites as prohibiting contract capacity path limitations, address loop flow within the system's contract path capacity, and thus support acceptance of sections 5.4-5.6 of the proposed Western-SPP JOA.¹²⁰ They also contend that *ComEd* is irrelevant because the proposed Western-SPP JOA does not provide for the denial of transmission service; rather it provides that use in excess of contract path capacity must be arranged pursuant to the applicable OATT.¹²¹

¹¹⁴ *Id.* at 9-10.

¹¹⁵ *Id.* at 12.

¹¹⁶ *Id.* at 13-14.

¹¹⁷ *Id.* at 14 (citing *Xcel Energy Operating Companies, et al.*, 129 FERC ¶ 61,203 (2009) (*Xcel*)).

¹¹⁸ *Id.* at 16 (citing *AEP*, 93 FERC ¶ 61,151 at 61,474).

¹¹⁹ *Id.*

¹²⁰ *Id.* at 21-23 (citing *Associated Electric*, 115 FERC ¶ 61,213; *Exelon*, 99 FERC ¶ 61,235).

¹²¹ *Id.* at 23-24 (citing *ComEd*, 95 FERC ¶ 61,252 at 61,875).

81. SPP and Western argue that the Commission should reject MISO's claim that the proposed Western-SPP JOA is unjust and unreasonable because it provides for pancaked rates. SPP and Western claim that the charges are appropriate, and are consistent with the charges under the System Integration Coordination Agreement between Xcel Energy Operating Companies and Western.¹²²

82. SPP and Western challenge MISO's claim that the proposed Western-SPP JOA should be rejected because it does not explain all aspects of how sections 5.4-5.6 will be implemented. SPP and Western state that the technical details of how the flows will be modeled are typically not contained in a JOA but are in operating guides and manuals, and contract path capacity is determined pursuant to studies. SPP and Western allege that accepting the proposed Western-SPP JOA, establishing a framework, without details, is consistent with the Commission's acceptance of the MISO-SPP JOA and MISO Seams Service.¹²³

83. SPP and Western also argue that MISO attempts to confuse the issues by discussing the public policy requirements of Order No. 1000. According to SPP and Western, nothing in the public policy provisions of Order No. 1000 or any other Commission order requires transmission providers to subsidize intermittent resources with free transmission service. They also argue that if an intermittent resource needs to obtain transmission service in order to maintain a contract path between generation and load, it is obligated to pay for it, even if it obtains part of its transmission service from one transmission provider and the remainder of its service from a second transmission provider.¹²⁴

84. SPP and Western state that the proposed Western-SPP JOA does not affect market-to-market dispatch, does not affect SPP's compliance with the Capacity Sharing Order, and is not a collateral attack on the MISO Seams Service Order.¹²⁵

85. SPP and Western assert that the proposed Western-SPP JOA is consistent with the CMP, in that the CMP does not grant transmission rights to the other party's system. SPP and Western claim the CMP's lack of transmission system rights is made clear by

¹²² *Id.* at 24 (citing *Xcel*, 129 FERC ¶ 61,203).

¹²³ *Id.* at 26-27 (citing MISO Seams Service Order, 136 FERC ¶ 61,152 at P 56, n. 29).

¹²⁴ *Id.* at 27-28.

¹²⁵ *Id.* at 28-30.

MISO's insertion of the capacity sharing provision (section 5.2) in the MISO-SPP JOA.¹²⁶ SPP and Western assert that sufficient contract path rights are a condition for the use of the CMP, absent a capacity sharing provision. Therefore, they conclude that sections 5.4-5.6 of the proposed Western-SPP JOA are consistent with the CMP. SPP and Western also assert that MISO, in arguing sections 5.4-5.6 of the proposed Western-SPP JOA are incompatible with the CMP, overlook that the MISO-SPP JOA's capacity sharing provision (section 5.2) also affects the usage of the system under the CMP, but in a different way.¹²⁷ SPP and Western argue that if the capacity sharing provision in the MISO-SPP JOA was not deemed to conflict with the CMP, then the capacity limiting provision in the proposed Western-SPP JOA should also not be deemed to conflict with the CMP. SPP and Western argue that the CMP is not a license to use transmission service without regard to contractual or operating limits, as that would be devastating to system reliability.¹²⁸

86. SPP and Western argue that the Commission does not need to clarify when the CMP takes precedence over sections 5.4-5.6, as requested by Xcel. According to SPP and Western, the CMP addresses energy flows and congestion management in real-time, while sections 5.4-5.6 address SPP and Western's obligations to obtain transmission service. Therefore the CMP does not take precedence. In addition, SPP and Western argue that the Commission should reject Xcel's request that the Commission find that the CMP provides for in-kind payment for the other party's use of the transmission system. SPP and Western claim that under the CMP, each party may receive allocations on the other party's system and impose loop flow on the other party, but only up to an agreed-upon level.¹²⁹

87. SPP and Western also argue that the Commission should reject MISO Transmission Owners' argument that the proposed Western-SPP JOA is inconsistent with MISO Seams Service. SPP and Western claim that Western terminated its MISO Seams Service, so it is not relevant. SPP and Western note that in the MISO Seams Service Order, the Commission expressly stated that MISO Seams Service is voluntary and could be terminated. SPP and Western note that the proposed Western-SPP JOA does not limit the availability of transmission service, as alleged by the MISO Transmission Owners; rather, it simply requires that needed transmission service be purchased.

¹²⁶ *Id.* at 33-34.

¹²⁷ *Id.* at 35-36.

¹²⁸ *Id.* at 37.

¹²⁹ *Id.* at 38-39.

88. SPP and Western also claim that SPP's request for a waiver of the Commission's notice requirements to make the proposed Western-SPP JOA effective April 30, 2012 is valid because the proposed Western-SPP JOA will enhance coordination between Western and SPP and will not have a rate impact.¹³⁰ SPP and Western argue that allowing the proposed Western-SPP JOA to go into effect April 30, 2012 will allow the CMP to continue to apply to the Integrated System, which will enhance regional reliability.

B. Commission Staff's Deficiency Letter

89. On June 19, 2012, Commission staff issued a deficiency letter, requesting that SPP provide additional information on the proposed Western-SPP JOA. Questions included whether loop flow had occurred on Western's system, and whether sections 5.4-5.6 of the proposed Western-SPP JOA would affect third parties including MISO.

C. SPP's Response

90. SPP filed a response to the deficiency letter on July 20, 2012.¹³¹ In its response, SPP, on behalf of itself and Western, states that the proposed Western-SPP JOA, particularly sections 5.4-5.6, will not affect the rights of third parties, including MISO's rights under the MISO-SPP JOA; will not result in any difference in the way that SPP analyzes requests for transmission service; and reflects current industry practice.¹³² SPP specifies that sections 5.4-5.6 of the proposed Western-SPP JOA do not apply to any energy generated by MISO¹³³ and do not apply to the provision of transmission service by third parties.¹³⁴ SPP also explains that sections 5.4-5.6 do not reduce or detract from currently-recognized contractual rights between either SPP or Western and third parties.¹³⁵

¹³⁰ *Id.* at 41.

¹³¹ SPP filed the response one day out-of-time, due to eTariff issues. We accept SPP's Filing.

¹³² SPP July 20, 2012 Response in Docket No. EL12-1586-001 at 1-3.

¹³³ *Id.* at 8.

¹³⁴ *Id.* at 9.

¹³⁵ *Id.*

91. SPP also proposes revisions to clarify sections 5.4-5.6 of the Western-SPP JOA, which SPP states it will submit in a compliance filing in response to a Commission order.¹³⁶ SPP's proposed revisions include adding "within a Party's region" after "transmission owner," to clarify that the provisions do not apply to transmission owners located in other regions, such as MISO.¹³⁷ The proposed revisions also add "that provide Contract Path capacity" after "contractual transmission agreements," to clarify that such agreements include all agreements that provide additional contract path capacity.¹³⁸ SPP explains that, for example, the provisions would not restrict SPP from engaging in energy exchanges with a third party up to the combined contract path capacity of SPP and MISO with that third party.¹³⁹ The proposed revisions to section 5.4-5.6 also replace "and/or" with "and."

D. Notice of Filing and Responsive Pleadings

92. Notice of SPP's response was published in the *Federal Register*, 77 Fed. Reg. 45,346 (2012), with comments due August 10, 2012. MISO and MISO Transmission Owners filed protests to the response. On August 27, 2012, SPP and Western filed an answer to the protests. On September 7, 2012, MISO filed an answer to SPP and Western's answer.

1. MISO's Protest

93. MISO maintains its previous objections to sections 5.4-5.6 of the proposed Western-SPP JOA.¹⁴⁰ MISO claims that sections 5.4-5.6, even as revised, would indirectly reduce the capacity available to MISO under the capacity sharing provision of the MISO-SPP JOA. In addition, MISO claims that sections 5.4-5.6 would require a transmission service agreement as a precondition for all contractual interconnections, which MISO says the Commission does not allow.¹⁴¹ MISO also repeats its argument that sections 5.4-5.6 provide for compensation for loop flows, which MISO claims is especially objectionable because SPP and Western failed to respond to the deficiency

¹³⁶ *Id.* at 2.

¹³⁷ *Id.* at Appendix A.

¹³⁸ *Id.*

¹³⁹ *Id.* at 7.

¹⁴⁰ MISO August 10, 2012 Protest in Docket No. ER12-1586-001 at 1, 3-4.

¹⁴¹ *Id.* at 2-3.

letter's request for evidence of loop flow on their systems.¹⁴² MISO also expands on the argument that sections 5.5-5.6 of the proposed Western-SPP JOA are inconsistent with market dispatch in Day 2 markets.¹⁴³ MISO claims that SPP must explain whether under SPP's proposed Integrated Marketplace, sections 5.4-5.6 would require MISO to reserve transmission service with Western to allow SPP to redispatch generation to manage congestion on MISO flowgates.¹⁴⁴ MISO alleges that this would significantly alter the shadow price in the market-to-market process, resulting in less efficient congestion management.¹⁴⁵

2. MISO Transmission Owners' Protest

94. MISO Transmission Owners claim that SPP's response does not address the substance of the questions in the deficiency letter.¹⁴⁶ MISO Transmission Owners specify that SPP fails to provide requested details, including whether loop flows are present historically, and, if so, whether under the proposed Western-SPP JOA they would be treated as energy deliveries that require contract path capacity. MISO Transmission Owners assert that treating loop flows as energy deliveries requiring contract path capacity would degrade seams management among operating systems.¹⁴⁷

95. MISO Transmission Owners also claim that the proposed revisions to sections 5.4-5.6 of the proposed Western-SPP JOA do not correct the shortcomings of the proposed Western-SPP JOA. Specifically, MISO Transmission Owners claim that SPP and Western have failed to explain why the provisions do not amount to charging for loop flow, and have failed to meet the requirement in *Northern Indiana* that a transmission owner seeking to charge for loop flow must show that loop flow jeopardizes system reliability or diminishes the entity's ability to use its system in the most economical manner.¹⁴⁸

¹⁴² *Id.* at 3, 8-12.

¹⁴³ *Id.* at 12-14.

¹⁴⁴ *Id.* at 15.

¹⁴⁵ *Id.* at 16.

¹⁴⁶ MISO Transmission Owners August 10, 2012 Protest in Docket No. ER12-1586-001 at 2-3.

¹⁴⁷ *Id.* at 3-4.

¹⁴⁸ *Id.* at 5-6 (citing *Northern Indiana*, 116 FERC ¶ 61,006 at P 11).

96. MISO Transmission Owners also point out that SPP's response that the proposed Western-SPP JOA will have no impact on third parties is inconsistent with the declarations sought in the Petition in Docket No. EL12-60-000. According to MISO Transmission Owners, if the Petition were granted, it would clearly affect MISO by forcing MISO to treat flowgates with Western as reciprocal coordinated flowgates, which MISO would otherwise not do. MISO Transmission Owners state that when the Petition and the Western-SPP JOA are considered together, the proposed Western-SPP JOA's harm to third parties becomes apparent.¹⁴⁹ MISO Transmission Owners also claim that SPP and Western's strategy of asking the Commission to consider the Petition and the proposed Western-SPP JOA separately is a blatant attempt to evade MISO tariff requirements and Commission precedent.¹⁵⁰

3. SPP and Western's Answer to Protests

97. SPP and Western answer that the arguments made in the protests fail to acknowledge that sections 5.4-5.6 of the proposed Western-SPP JOA merely provide the basis by which SPP and Western will make available to each other contract path capacity on their respective systems, and reflect well-established Commission policy.¹⁵¹ SPP and Western reiterate that the Commission does not require contract path sharing on all transmission providers, and the Commission expressly stated that MISO Seams Service was voluntary.¹⁵² SPP and Western also repeat that sections 5.4-5.6 do not require compensation for loop flows resulting from transmission service provided within transmission customers' contract path limitations.¹⁵³ SPP and Western also note that the contract path limitations in sections 5.4-5.6 are consistent with Day 2 markets, in that they have been in place in agreements affecting MISO's Day 2 market, including section 5.1.10 of the MISO-MAPP SOA and MISO Seams Service prior to insertion of capacity sharing, without negative effect.¹⁵⁴ SPP and Western repeat their assertion that MISO

¹⁴⁹ *Id.* at 6-7.

¹⁵⁰ *Id.* at 7.

¹⁵¹ SPP and Western August 27, 2012 Answer in Docket No. ER12-1586-001, at 3-7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 834, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 447).

¹⁵² *Id.* at 10 (citing Capacity Sharing Order, 135 FERC ¶ 61,205 at PP 42-43).

¹⁵³ *Id.* at 11.

¹⁵⁴ *Id.* at 12-13.

and MISO Transmission Owners want to be able to engage in the unreserved use of the SPP and Western systems, which is contrary to Order No. 890 and the tariffs of SPP, Western, and MISO.¹⁵⁵

4. MISO's Answer

98. MISO asserts that SPP and Western's arguments are incorrect, and that the contract path limitations in sections 5.4-5.6 of the proposed Western-SPP JOA do provide compensation for loop flow without the required evidence of loop flows and adverse effects from those loop flows.¹⁵⁶ MISO maintains that sections 5.4-5.6 amount to an alternative loop flow compensation mechanism "masquerading as an unreserved use charge."¹⁵⁷

E. Discussion

1. Procedural Matters

99. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2012), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2012), the Commission will grant Exelon's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

100. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2012), prohibits an answer to a protest or to an answer unless otherwise ordered by the decisional authority. We will accept the answers filed by SPP, MISO, MISO Transmission Owners, and Xcel because they have provided information that assisted us in our decision-making process.

2. Commission Determination

101. We will conditionally accept the proposed Western-SPP JOA, subject to a compliance filing discussed below. We agree with SPP and Western that it will enhance coordination between the parties. We reject MISO's argument that the proposed

¹⁵⁵ *Id.* at 14.

¹⁵⁶ MISO September 7, 2012 Answer in Docket No. ER12-1586-001 at 2-5.

¹⁵⁷ *Id.* at 4.

Western-SPP JOA is unjust and unreasonable because it will reduce the capacity sharing SPP must do with MISO under the MISO-SPP JOA, as required in the Capacity Sharing Order. SPP and Western repeatedly affirm, in their answers to the protests and SPP's response to the deficiency letter, that the proposed Western-SPP JOA does not reduce MISO's capacity sharing rights under section 5.2 of the MISO-SPP JOA. SPP and Western expressly state that SPP does not dispute its obligation to share its capacity to Entergy Arkansas if Entergy Arkansas joins MISO, as found in the Capacity Sharing Order (except to the extent SPP has appealed the Capacity Sharing Order to the D.C. Circuit). We agree with SPP and Western that there is no effect on SPP's capacity sharing under section 5.2 of the MISO-SPP JOA.

102. We agree with SPP and Western that while the Commission has accepted contract path capacity sharing provisions in the MISO-SPP JOA, MISO Seams Service and other seams agreements, the Commission has not required such provisions to be included in all seams agreements. The Commission accepted the capacity sharing provision in MISO's Seams Service but noted that Seams Service is voluntary, so that a prospective customer can decide if the obligations outweigh the benefits.¹⁵⁸ Similarly, in granting MISO's petition for declaratory order regarding the capacity sharing provision in the MISO-SPP JOA, the Commission expressly found that SPP had agreed to the provision, but could renegotiate it. As SPP and Western note, the Commission has accepted provisions under which a transmission provider limits sales of transmission service to its system's contract path capability, such as the NDEX provision, section 5.1.10 of the MISO-MAPP SOA.¹⁵⁹ The Commission has also accepted seams coordination arrangements that do not contain a contract path capacity sharing provision, such as MISO Seams Service as originally implemented (i.e., prior to the addition of the capacity sharing provision). Accordingly, we do not find the contract path limitations in sections 5.4-5.6 to be unjust or unreasonable.

103. We reject MISO's argument that SPP and Western are required to demonstrate that sections 5.4-5.6 are consistent with or superior to the Commission's *pro forma* OATT. The proposed Western-SPP JOA simply provides that access to each party's

¹⁵⁸ See, e.g., MISO Seams Service Order, 135 FERC ¶ 61,205 at PP 41-45 (explaining that the contract path capacity sharing provision was acceptable because Seams Service is voluntary; capacity sharing is consistent with Seams Service generally; capacity sharing does not reduce the rights to sell transmission on its facilities; and capacity sharing is helpful in outage situations).

¹⁵⁹ See MISO-MAPP SOA Order, 110 FERC ¶ 61,290. As noted above, the MISO-MAPP SOA was in effect prior to MISO offering Seams Service under its tariff.

transmission capacity will be available pursuant to their respective existing tariffs. As SPP and Western argue, in *Associated Electric* and *Exelon*, the Commission did not broadly prohibit contract capacity path limitations, but addressed loop flow within the system's contract path capacity.¹⁶⁰ Therefore, these orders do not require rejection of sections 5.4-5.6 of the proposed Western-SPP JOA. Likewise, we agree with SPP and Western that the Commission's finding in *ComEd*, that a party may not deny rollover service due to insufficient transmission capacity on a third party's transmission system, does not apply here because the proposed Western-SPP JOA does not provide for the denial of transmission service, but instead provides that use in excess of contract path capacity must be arranged pursuant to the applicable OATT.¹⁶¹

104. We also agree with SPP and Western that sections 5.4-5.6 of the proposed Western-SPP JOA do not amount to unauthorized compensation for loop flow. In *AEP*, which MISO claims prohibits all compensation for loop flows, the Commission denied TVA's request for compensation for loop flow caused by the interconnection of a generating facility to AEP's transmission system.¹⁶² The Commission stated that loop flows are an unavoidable consequence of interconnected operations and that the existence of loop flows on an interconnected neighboring transmission system alone has traditionally not entitled the interconnected neighbor to the Commission's ordering compensation for flows on its system. Rather, the Commission continued, it has directed utilities to work to resolve such issues themselves, in the first instance, and to exercise all appropriate measures to resolve operational problems on a mutually acceptable basis, and the Commission would defer to the parties' own efforts to cooperate and resolve this matter on their own.¹⁶³ Sections 5.4-5.6 are SPP and Western's chosen method for addressing loop flow, through contract path capacity limitations, and these provisions only state that transmission service must be arranged to the extent that the parties have insufficient contract path capacity to accommodate their energy deliveries.

105. We also find that sections 5.4-5.6 of the proposed Western-SPP JOA do not conflict with the CMP. As SPP and Western contend, sections 5.4-5.6 address different issues from the CMP: sections 5.4-5.6 address obligations to obtain transmission service, while the CMP addresses energy flows and congestion management in real-time. Moreover, the CMP does not require capacity sharing, as illustrated by the separate

¹⁶⁰ See *Associated Electric*, 115 FERC ¶ 61,213; *Exelon*, 99 FERC ¶ 61,235.

¹⁶¹ See *ComEd*, 95 FERC ¶ 61,252 at 61,875.

¹⁶² See *AEP*, 93 FERC ¶ 61,151 at 61,474.

¹⁶³ See *id.*

provision for capacity sharing in section 5.2 of the MISO-SPP JOA and in MISO Seams Service. We also agree with SPP and Western that sections 5.4-5.6 of the proposed Western-SPP JOA are not inconsistent with Day 2 markets. As SPP and Western point out, MISO's Day 2 market operated despite the contract path capacity limitations in section 5.1.10 of the MISO-MAPP SOA, and the lack of capacity sharing under MISO Seams Service prior to MISO inserting provision for capacity sharing. We also disagree with MISO's claim that the proposed Western-SPP JOA conflicts with Order No. 1000's requirement that transmission providers take into account public policy considerations by failing to benefit a wind generator in MISO. In addition, a variable energy resource, just like any other customer that needs to obtain transmission service in order to fulfill its obligations to load, is required to obtain and pay for the transmission service it needs given the available service options.

106. Therefore, we conditionally accept the proposed Western-SPP JOA, subject to the revisions SPP proposed in the July 20, 2012 response to the deficiency letter. In addition, we find that certain wording in section 5.6.1 requires further clarification. Specifically, the term "energy exchange" in section 5.6.1 could encompass energy generated outside of the two regions, including in MISO. While SPP and Western state that the provisions do not affect the transmission service or rights of third parties, including MISO,¹⁶⁴ we believe the wording should be revised, to ensure that section 5.6 reflects SPP and Western's stated intention. Therefore, we direct SPP to file, within 30 days of the date of this order, revisions to clarify that the term "energy exchange" as applied in sections 5.4-5.6 relates only to energy sourced in Western or SPP.

107. We deny waiver of the 60-day prior notice requirement. The Commission will grant waiver of the 60-day prior notice requirement on good cause shown.¹⁶⁵ SPP has not shown good cause for waiver. Therefore, the Western-SPP JOA is accepted effective June 20, 2012.

The Commission orders:

(A) The Petition for Declaratory Order is granted, as discussed in the body of this order.

¹⁶⁴ See, e.g., SPP and Western May 29, 2012 Answer in Docket No. ER12-1586-000 at 5.

¹⁶⁵ *Central Hudson Gas & Electric Corp., et al.*, 60 FERC ¶ 61,106, at 61,339 (1992), *reh'g denied*, 61 FERC ¶ 61,089 (1992) (finding that the Commission will grant waiver of the 60-day prior notice requirement if good cause is shown and the agreement is filed prior to the commencement of service).

(B) Petitioners must submit the filing fee for a petition for declaratory order, within 30 days of the date of this order, as discussed in the body of this order.

(C) The Western-SPP JOA is conditionally accepted, effective June 20, 2012, as discussed in the body of this order.

(D) SPP is 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.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.