

155 FERC ¶ 61,174  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Midwest Independent Transmission  
System Operator, Inc.

Docket No. ER12-715-004

ORDER DENYING REHEARING

(Issued May 19, 2016)

1. On October 29, 2015, the Commission issued an order reversing in part and affirming in part the July 16, 2013 Initial Decision<sup>1</sup> in this proceeding and also denying rehearing of the Commission order accepting Midcontinent Independent System Operator, Inc.'s (MISO) proposed addition of Schedule 39 to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff).<sup>2</sup> On November 30, 2015, MISO and the MISO Transmission Owners<sup>3</sup> (Filing Parties) filed

---

<sup>1</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 144 FERC ¶ 63,007 (2013) (Initial Decision). Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

<sup>2</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 153 FERC ¶ 61,101 (2015) (Order on Initial Decision).

<sup>3</sup> For the purposes of this proceeding, the MISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; City Water, Light & Power (Springfield, Illinois); Dairyland Power Cooperative; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern

(continued ...)

a request for rehearing of the Order on Initial Decision. In this order, we deny the request for rehearing.

**I. Background**<sup>4</sup>

**A. RECB and MVP Proceedings**

2. The Commission approved Attachment FF (Transmission Expansion Planning Protocol) to the Tariff as part of the Regional Expansion Criteria and Benefits (RECB) provisions that were added in order to allocate the costs of regionally planned projects in MISO.<sup>5</sup> Attachment FF described the process used by MISO in the development of the MISO Transmission Expansion Plan (MTEP) projects, which fell into three categories: (1) Baseline Reliability Projects; (2) New Transmission Access Projects; and (3) Market Efficiency Projects. After rehearing and compliance, the Commission conditionally accepted Section III.A.2.i of Attachment FF,<sup>6</sup> which contained the following exit fee language:

A Party that withdraws from [MISO] shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a [m]ember of [MISO] and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by [MISO] and the withdrawing [m]ember.

3. On July 15, 2010, in Docket No. ER10-1791-000, MISO and certain MISO transmission owners proposed revisions to the Tariff to include Multi-Value Projects

---

Illinois Power Cooperative; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

<sup>4</sup> A complete background of these proceedings can be found in the Order on Initial Decision, 153 FERC ¶ 61,101 at PP 3-28.

<sup>5</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh'g*, 117 FERC ¶ 61,241 (2006); *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (RECB II Order), *order on reh'g*, 120 FERC ¶ 61,080 (2007) (RECB II Rehearing Order).

<sup>6</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,127, at P 51 (2008).

(MVPs) and a cost allocation methodology applicable to such projects.<sup>7</sup> The proposal provided for an “MVP charge . . . based on the annual revenue requirements reported by each [MISO] Transmission Owner for projects that meet the MVP criteria,” and “recovery for 100%” of such costs “from load and exports using a per-MWh charge.”<sup>8</sup> MISO also proposed that a transmission owner that withdraws from MISO will remain responsible for all financial obligations incurred under Attachment FF while a member of MISO.<sup>9</sup> In its order conditionally accepting the MVP Filing,<sup>10</sup> the Commission responded to the question of whether load that withdraws from MISO is subject to the MVP Usage Charge.<sup>11</sup> The Commission stated that its understanding of the Attachment FF exit fee language was that a withdrawing transmission owner “would remain responsible for all financial obligations incurred with respect to the MVP tariff provisions while a member of [MISO].”<sup>12</sup> The Commission also responded to concerns about the process of withdrawal and the costs that a particular withdrawing member may face, finding that existing transmission owners were on notice for potential MVP cost responsibility,<sup>13</sup> but that the specific MVP costs that a particular withdrawing member

---

<sup>7</sup> See *Midwest Indep. Transmission Sys. Operator, Inc.*, Docket No. ER10-1791-000, Proposed Revisions to the Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff of MISO and the MISO Transmission Owners (filed Jul. 15, 2010) (MVP Filing).

<sup>8</sup> *Id.* at 24.

<sup>9</sup> The Tariff language previously provided that a Party that withdraws from MISO shall remain responsible for all financial obligations incurred under Attachment FF while a member of MISO.

<sup>10</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 471 (2010) (MVP Order), *order on reh’g*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order) (collectively, MVP Orders).

<sup>11</sup> MVP Order, 133 FERC ¶ 61,221 at P 471.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* P 470.

may face were beyond the scope of the generic rate proceeding.<sup>14</sup> The Commission stated that such amounts would be determined at the time of withdrawal.<sup>15</sup>

**B. Withdrawals and Exit Fee Agreements**

4. On July 31, 2009, American Transmission Systems, Incorporated (ATSI) notified MISO of its intent to withdraw from MISO effective May 31, 2011.<sup>16</sup> On December 17, 2009, the Commission authorized ATSI's withdrawal from MISO and integration into PJM Interconnection, L.L.C. (PJM).<sup>17</sup> ATSI and MISO negotiated an Exit Fee Agreement (ATSI-MISO Exit Fee Agreement) that was conditionally accepted by the Commission on June 20, 2011.<sup>18</sup>

5. On May 20, 2010, Duke Energy Ohio, Inc./Duke Energy Kentucky, Inc. (Duke) notified MISO of its intent to withdraw from MISO effective December 31, 2011.<sup>19</sup> On October 21, 2010, the Commission conditionally authorized Duke to withdraw from MISO.<sup>20</sup>

---

<sup>14</sup> *Id.* P 472.

<sup>15</sup> *Id.* P 471.

<sup>16</sup> *Am. Transmission Sys., Inc.*, 129 FERC ¶ 61,249, at PP 31, 58 (2009) (Realignment Order), *order addressing partial requests for clarification and reh'g*, 130 FERC ¶ 61,171 (2010), *order addressing remaining requests for clarification and reh'g*, 140 FERC ¶ 61,226 (2012), *aff'd sub nom. FirstEnergy Service Co. v. FERC*, D.C. Cir. No. 12-1461 (July 18, 2014).

<sup>17</sup> Realignment Order, 129 FERC ¶ 61,249 at P 4.

<sup>18</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,255, at PP 16, 20 (2011). The Commission also conditionally accepted an exit fee agreement between Duke and MISO on December 15, 2011. *See Midwest Indep. Transmission Sys. Operator, Inc.*, 137 FERC ¶ 61,198, at P 19 (2011).

<sup>19</sup> *Duke Energy Ohio, Inc.*, 133 FERC ¶ 61,058, at P 71 (2010).

<sup>20</sup> *Id.* P 1.

**C. Provisions of the MISO Transmission Owners Agreement and the MISO Tariff in Effect at the Time of Withdrawal**

6. At the time of Duke and ATSI's respective withdrawals, the Agreement of Transmission Facilities Owners to Organize the Midwest Independent Transmission System Operator, Inc. (MISO Transmission Owners Agreement), as well as the Tariff that was in effect at the time that ATSI and Duke withdrew from MISO (the pre-withdrawal Tariff), established Duke and ATSI's withdrawal-related obligations. Article Five, Section II.B of the MISO Transmission Owners Agreement provided:

All financial obligations incurred and payments applicable to time periods prior to the effective date of such [transmission owner's] withdrawal shall be honored by [MISO] and the withdrawing [o]wner.

7. Section III.A.2.j of Attachment FF to MISO's pre-withdrawal Tariff described the cost obligations of a transmission owner withdrawing from MISO as follows:

[A transmission owner] that withdraws from [MISO] shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a [m]ember of [MISO] and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by [MISO] and the withdrawing [m]ember.

8. Section III of Attachment FF to MISO's pre-withdrawal Tariff contained provisions that designated cost responsibility for MTEP projects. The introductory paragraph of Section III of Attachment FF provided:

[T]he recommended MTEP shall, for any enhancement or expansion that is included in the plan, designate: (i) the Market Participant(s) in one or more pricing zones that will bear cost responsibility for such enhancement or expansion, as and to the extent provided by any applicable provision of the Tariff, including ... any applicable cost allocation method ordered by the Commission; or (ii) in the event and to the extent that no provision of the Tariff so assigns cost responsibility, the Market Participants(s) or Transmission Customers(s) in one or more pricing zones from which the cost of such enhancements or expansions shall be recovered through charges established pursuant to Attachment GG of this Tariff, or as otherwise provided for under this Attachment FF.

9. Subsection A of Section III of Attachment FF contained provisions for the assignment of MTEP transmission project costs within the MISO region. Section III.A.2 provided that MISO “will designate and assign cost responsibility on a regional, and sub-regional basis for Network Upgrades identified in the MTEP.”<sup>21</sup> The pre-withdrawal Tariff contained specific provisions addressing cost allocation for the various types of MTEP projects. For instance, Section III.A.2.c.ii of Attachment FF stated that:

20 [percent] of the Project Cost for Baseline Reliability Projects with a voltage class of 345 kV or higher shall be allocated on a system-wide basis to all Transmission Customers and recovered through a system-wide rate. The remaining 80 [percent] of the Project Cost for Baseline Reliability Projects with a voltage class of 345 kV or higher shall be allocated on a sub-regional basis to all Transmission Customers in designated pricing zones. The designated pricing zones and the sub-regional allocation of the Project Cost shall be determined on a case-by-case basis in accordance with a Line Outage Distribution Factor Table[.]

10. Similarly, Section III.A.2.f of Attachment FF allocated the cost of Market Efficiency Projects as follows: 20 percent of the project cost will be allocated on a system-wide basis to all Transmission Customers and recovered through a system-wide rate. The remaining 80 percent of the costs will be allocated on a sub region-wide basis to all Transmission Customers in each of the Local Resource Zones, based on the relative benefit determined for each Local Resource Zone that has a positive present value of annual benefits over the evaluation period. Section II of Attachment FF described the development process for MTEP projects and provided certain criteria used to categorize expansion projects in the MTEP for the purposes of assigning cost responsibility. Section II.B.1.c specified that the cost allocation for Market Efficiency Projects “shall be determined one time at the time that the Market Efficiency Project is presented to the Board of Directors for approval.” The costs of Market Efficiency Projects and Baseline Reliability Projects were recovered through charges established pursuant to Attachment GG (Network Upgrade Charge).

11. The costs of MVPs were allocated according to section III.A.2.g of Attachment FF, which provided that 100 percent of the annual revenue requirement of MVPs was to be allocated “on a system-wide basis to [t]ransmission [c]ustomers that withdraw energy.

---

<sup>21</sup> Network Upgrades include Generator Interconnection Projects, Baseline Reliability Projects, Market Efficiency Projects, and MVPs.

. . . and recovered through an MVP Usage Charge pursuant to Attachment MM.” Attachment MM and Schedule 26-A, in turn, provided for the annual recalculation of the MVP Usage Charge and its assessment to all customers that withdrew energy from the MISO transmission system each month. Section 1 of Attachment MM stated that Attachment MM “sets forth the method for collecting the charges associated with [MVPs] and for distributing the revenues associated with such charges in accordance with Schedule 26-A.” Section 3 of Attachment MM described the calculation of the annual revenue requirement for each MVP. Section 4 of Attachment MM described the MVP Usage Rate, which is a system-wide rate based on the annual revenue requirement and charged monthly to market participants based on their actual energy withdrawals from MISO.

#### **D. Schedule 39 Order**

12. On February 27, 2012, the Commission conditionally accepted a new Schedule 39 ([MVP] Financial Obligations and Cost Recovery for Withdrawing Transmission Owners) and related revisions to Attachment MM ([MVP] Charge) to MISO’s Tariff, to become effective January 1, 2012.<sup>22</sup> The revisions allow MISO to charge, on an on-going basis, a withdrawing transmission owner a monthly MVP Usage Rate that includes a share of the costs of all MVPs that the MISO Board of Directors (MISO Board) approved prior to the effective date of the transmission owner’s withdrawal. Schedule 39 provides that MISO will distribute the amounts collected under Schedule 39 from a withdrawing transmission owner in accordance with the methodology set forth in Schedule 26-A ([MVP] Usage Rate).<sup>23</sup>

13. MISO proposed to add Appendix A and Appendix B to Schedule 39 for ATSI and Duke, respectively, which listed the MVPs approved by the MISO Board prior to the effective date of ATSI’s and Duke’s withdrawals from MISO. Thus, Schedule 39 as proposed would have made ATSI and Duke responsible for the costs of these MVPs. However, noting that ATSI and Duke withdrew from MISO prior to the effective date of Schedule 39, the Commission concluded that MISO could not automatically apply the Schedule 39 Tariff provisions to ATSI and Duke unless those provisions are consistent

---

<sup>22</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 138 FERC ¶ 61,140, at P 3 (2012) (Schedule 39 Order).

<sup>23</sup> The MISO Transmission Owners periodically update the annual revenue requirements for MVPs using the methodology provided under Attachment MM. MISO proposed to calculate the annual revenue requirements for withdrawing transmission owners’ MVPs pursuant to Schedule 39.

with the MVP-related withdrawal obligations in the Tariff at the time that ATSI and Duke withdrew from MISO.<sup>24</sup> The Commission set for hearing and settlement judge procedures the issues of: (1) whether MISO's proposal to use the methodology in Schedule 39 to calculate ATSI's and Duke's obligations under the Tariff at the time that they withdrew from MISO was consistent with the MVP-related withdrawal obligations in the Tariff at that time; and (2) if not, what the amount of, and methodology for calculating, ATSI's and Duke's MVP cost responsibility should be.<sup>25</sup> The Commission also set for hearing the issue of whether ATSI retains any responsibility for MVP costs under the terms of the ATSI-MISO Exit Fee Agreement, and if so, the amount of that cost responsibility.<sup>26</sup>

14. On March 28, 2012, ATSI and Duke filed requests for rehearing of the Schedule 39 Order.

**E. Initial Decision**

15. On July 16, 2013, presiding Administrative Law Judge H. Peter Young (Presiding Judge) issued an Initial Decision in Docket No. ER12-715-003. The Presiding Judge generally defined the scope of the issues set for hearing and found that: (1) the cost calculation methodology in Schedule 39 may be automatically applied to ATSI and Duke; (2) it still might be just and reasonable to apply the Schedule 39 methodology to ATSI and Duke even if the Schedule 39 obligations are found to be inconsistent with the MVP-related withdrawal obligations in the pre-withdrawal Tariff; and (3) the ATSI-MISO Exit Fee Agreement does not absolve ATSI of cost responsibility under Article Five, Section II.B of the MISO Transmission Owners Agreement.

16. As an initial matter, the Presiding Judge found that the Schedule 39 methodology could be applied to ATSI and Duke if it was consistent with the MVP-related withdrawal obligations in the pre-withdrawal Tariff; he found that this consistency standard required consideration of whether the Schedule 39 MVP cost calculation methodology is “non-

---

<sup>24</sup> Schedule 39 Order, 138 FERC ¶ 61,140 at P 74.

<sup>25</sup> *Id.* Earlier in the Schedule 39 Order, the Commission phrased the issues to be set for hearing slightly differently. The Commission set for hearing “whether ATSI and Duke are responsible for MVP costs and, if so, the amount of, and methodology for calculating, ATSI's and Duke's MVP cost responsibility.” *Id.* P 3.

<sup>26</sup> *Id.* P 75.



contradictory” or “compatible” with the Tariff in effect when ATSI and Duke withdrew from MISO.<sup>27</sup>

17. The Presiding Judge explained that Section II.B of the MISO Transmission Owners Agreement required withdrawing transmission owners to honor all financial obligations incurred prior to withdrawal, including any MVP costs incurred prior to withdrawal, and examined Section III.A.2.g.i of Attachment FF to the pre-withdrawal Tariff to determine whether this provision allocated MVP costs to ATSI and Duke while they were MISO members.<sup>28</sup> That provision stated that MVP costs “will be allocated” as follows:

One-hundred percent (100%) of the annual revenue requirements of the [MVPs] shall be allocated on a system-wide basis to Transmission Customers that withdraw energy, including External Transactions sinking outside the Transmission Provider’s region, and recovered through an MVP Usage Charge pursuant to Attachment MM.

The Presiding Judge interpreted the framing of Section III.A.2.g.i of Attachment FF to suggest some distinction between the system-wide *allocation* specified in the first clause, and the MVP Usage Charge *recovery* specified in the second.<sup>29</sup> The Presiding Judge found this inference reinforced by the fact that Section 1 of cross-referenced Attachment MM to the pre-withdrawal Tariff set forth “the method for *collecting* the charges associated with [MVPs] and for *distributing* the revenues associated with such charges in accordance with Schedule 26-A [of MISO’s Tariff].” He found that Section 4(a) of Attachment MM described an MVP Usage Rate as a “system-wide rate *charged* via Schedule 26-A,” and that Schedule 26-A defined the MVP Usage Rate and referred back to the MVP annual revenue requirement *calculation* formula in Section 3 of Attachment MM.<sup>30</sup> In other words, the Presiding Judge found no indication that Attachment MM was a usage-based cost allocator in any sense other than distributing, calculating, charging, and collecting an underlying (i.e. otherwise allocated, assigned, or imputed) MVP cost responsibility.<sup>31</sup>

---

<sup>27</sup> Initial Decision, 144 FERC ¶ 63,007 at PP 14-25.

<sup>28</sup> *Id.* PP 46-48.

<sup>29</sup> *Id.* P 54.

<sup>30</sup> *Id.* PP 50, 54.

<sup>31</sup> *Id.* PP 54-55.

18. The Presiding Judge then identified the mechanism that allocated the underlying MVP cost obligation. Observing that MVPs are a category of projects developed under the MTEP, the Presiding Judge stated that cost responsibility for all MTEP projects was incurred by market participants upon approval by the MISO Board.<sup>32</sup> He referenced Section III of Attachment FF (Designation of Cost Responsibility for MTEP Projects), which specified:

[T]he recommended MTEP shall, for any expansion or enhancement that is included in the plan, designate: (i) the Market Participant(s) in one or more pricing zones that will bear cost responsibility for such expansion or enhancement[.]

The Presiding Judge found that this pre-withdrawal Tariff provision did not differentiate among the various categories of MTEP projects, stated that an MTEP project is approved when the MISO Board votes to move it from the projects listed in MTEP Appendix B to the list of projects in MTEP Appendix A, and asserted that the costs associated with these projects are “allocated” in the sense of “financial obligations incurred” under Section III.A.2.j of Attachment FF when the MISO Board approves them.<sup>33</sup> Thus, the Presiding Judge concluded that, because MVPs are a category of MTEP projects, and because allocation upon MISO Board approval satisfied the “financial obligations incurred” requirement reflected in Section III.A.2.j of Attachment FF, Duke and ATSI incurred financial obligations for MVPs approved prior to their withdrawal from MISO, at the time the relevant projects were approved by the MISO Board. The Presiding Judge further found nothing in Schedule 39 that contradicts or is otherwise incompatible with the pre-withdrawal Tariff or the MISO Transmission Owners Agreement, and found that Schedule 39 could therefore be automatically applied to ATSI and Duke.<sup>34</sup>

19. Additionally, despite finding no inconsistency between Schedule 39 and the pre-withdrawal Tariff, the Presiding Judge explained that it would be just and reasonable to apply the Schedule 39 methodology to Duke and ATSI even if there were an inconsistency.<sup>35</sup>

---

<sup>32</sup> *Id.* P 56.

<sup>33</sup> *Id.* P 57.

<sup>34</sup> *Id.* P 74.

<sup>35</sup> *Id.* PP 75-77.

20. The Presiding Judge also ruled on several arguments challenging the imposition of MVP costs on ATSI, finding that: (1) the MISO Board properly approved the Michigan Thumb Project<sup>36</sup> as an MVP, and thus those costs were properly allocated to ATSI;<sup>37</sup> and (2) the ATSI-MISO Exit Fee Agreement does not absolve ATSI of MVP cost responsibility under Article Five, Section II.B of the MISO Transmission Owners Agreement.<sup>38</sup>

**F. Order on Initial Decision and Rehearing**

21. The Commission affirmed the Presiding Judge's interpretation of the consistency standard, but found that the imposition of the Schedule 39 methodology on Duke and ATSI would violate the filed rate doctrine because the Schedule 39 cost calculation methodology is not consistent with the pre-withdrawal Tariff.<sup>39</sup> The Commission further found that that the imposition of the Schedule 39 methodology on ATSI and Duke would violate the rule against retroactive ratemaking because it created a new method for billing withdrawn transmission owners for MVP charges based on that transmission owner's use of a transmission system other than MISO's, whereas the pre-withdrawal Tariff reflected a cost allocation methodology and recovery based on energy usage on the MISO system.<sup>40</sup>

22. The Commission found that, contrary to the assertions of the briefs on and opposing exceptions, the Commission's MVP Orders did not determine which MVP costs withdrawing transmission owners would be responsible for upon withdrawal - they merely indicated the potential responsibility for such costs, which would be determined on a case-by-case basis for each withdrawing transmission owner based on the approved Tariff provisions in effect prior to their withdrawal.<sup>41</sup> The Commission stated that the MVP Order held that withdrawing transmission owners "would remain responsible for all financial obligations incurred" and that those "amounts would be determined at the time

---

<sup>36</sup> The Michigan Thumb Project was the only MVP approved by the MISO Board for inclusion in Appendix A of the MTEP prior to ATSI's withdrawal from MISO.

<sup>37</sup> Initial Decision, 144 FERC ¶ 63,007 at PP 58-68.

<sup>38</sup> *Id.* PP 84-89.

<sup>39</sup> Order on Initial Decision, 153 FERC ¶ 61,101 at P 40.

<sup>40</sup> *Id.* P 41.

<sup>41</sup> *Id.* PP 70, 87.

of the withdrawal.”<sup>42</sup> The Commission also noted that the MVP Order did not reach the question of which MVP costs would be considered “financial obligations incurred,” but rather found that the MVP costs that a particular withdrawing member may face were beyond the scope of the generic rate proceeding.<sup>43</sup> Therefore, the Commission concluded that neither the MVP Order nor the MVP Rehearing Order addressed the specific point in time that initial MVP cost allocation should occur - only that, if MVP costs are incurred prior to withdrawal, the withdrawing transmission owner is liable for them.<sup>44</sup> The Commission noted that it was considering for the first time in the Order on Initial Decision what point in time the costs of MVPs are allocated such that they are “financial obligations incurred” under the MISO Transmission Owners Agreement and Section III.A.2.j of MISO’s pre-withdrawal Tariff.<sup>45</sup>

23. The Commission reversed the Presiding Judge’s finding that Schedule 39 is consistent with the pre-withdrawal Tariff, and that the Schedule 39 methodology of MVP cost allocation may therefore be applied to Duke and ATSI for the MVPs listed in Appendices A and B of Schedule 39.<sup>46</sup> More specifically, the Commission reversed the Presiding Judge’s finding that Section III.A.2.g.i of Attachment FF to the pre-withdrawal Tariff distinguished between the system-wide allocation of MVP costs to all transmission customers and the recovery of such costs through the MVP Usage Charge under Attachment MM.<sup>47</sup> The Commission found that the two clauses of Section III.A.2.g.i are properly read to describe, in the first clause, the allocation methodology to be implemented through Attachment MM, which is identified in the second clause. The Commission stated that Section III.A.2.g.i defined allocation for MVPs as encompassing both an assignment of cost responsibility and the recovery on a usage basis over time to transmission customers that withdraw energy, and that Section III.A.2.g.i did not identify MISO Board approval as having any bearing on MVP cost allocation. The Commission also reversed the Presiding Judge’s finding that pre-withdrawal Attachment MM

---

<sup>42</sup> *Id.* P 70 (citing MVP Order, 133 FERC ¶ 61,221 at P 471).

<sup>43</sup> *Id.* P 87 (citing MVP Order, 133 FERC ¶ 61,221 at P 472).

<sup>44</sup> *Id.* PP 70, 87 (citing MVP Order, 133 FERC ¶ 61,221 at PP 383-388; MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 253-259).

<sup>45</sup> *Id.* P 86.

<sup>46</sup> *Id.* P 69.

<sup>47</sup> *Id.* P 72.

calculated, distributed, and collected a previously allocated MVP cost obligation.<sup>48</sup> The Commission stated that Section 3 of Attachment MM described the calculation of the annual revenue requirement for each MVP, and Section 4 of Attachment MM described the MVP Usage Rate. It found that the formula for the MVP Usage Rate provided for a monthly system-wide rate based on the annual revenue requirement for each MVP, and that each monthly calculation of MVP costs resulted in a new allocation of MVP costs resulting from the usage of the system in that month.

24. The Commission next reversed the Presiding Judge's interpretation of Section III of Attachment FF, finding that the Presiding Judge did not consider the full text of the introductory paragraph to Section III, which stated that:

[T]he recommended MTEP shall . . . designate: (i) the Market Participant(s) in one or more pricing zones that will bear cost responsibility for such enhancement or expansion, *as and to the extent provided by any applicable provision of the Tariff, including ... any applicable cost allocation method ordered by the Commission*; or (ii) *in the event and to the extent that no provision of the Tariff so assigns cost responsibility*, the Market Participants(s) or Transmission Customers(s) in one or more pricing zones from which the cost of such enhancements or expansions shall be recovered through charges established pursuant to Attachment GG of this Tariff, or as otherwise provided for under this Attachment FF [emphasis added].

The Commission found that this paragraph required any cost responsibility in Section III of Attachment FF to be subject to the remainder of Section III, which made clear that financial obligations for non-MVPs were assigned differently than financial obligations for MVPs; i.e., Section III.A.2.g.i of Attachment FF provided that the annual revenue requirement associated with each MVP was allocated based on each transmission customer's use of the MISO system during that year, and did not contain any language about the MISO Board's approval or an up-front allocation to pricing zones.<sup>49</sup> The Commission found that the pre-withdrawal Tariff assigned cost responsibility for MVPs differently than cost responsibility for non-MVPs, and that the project costs for both Baseline Reliability Projects and Market Efficiency Projects were apportioned at the time

---

<sup>48</sup> *Id.* P 73.

<sup>49</sup> *Id.* P 75, 77.

of the MISO Board's approval, with such apportionment reflected in Appendix A of the MTEP (which lists the projects approved by the MISO Board).<sup>50</sup> The Commission further noted that MISO did not specify zonal allocation for the costs of MVPs in Appendix A of the MTEP as it did for Baseline Reliability Projects and Market Efficiency Projects. Given its finding, the Commission reversed the Presiding Judge's determination that ATSI and Duke are responsible for the costs of the MVPs listed in Appendices A and B of Schedule 39, all of which were approved by the MISO Board prior to their withdrawal.<sup>51</sup>

25. The Commission next found that the Presiding Judge erred in holding that it would be just and reasonable to apply the MVP cost calculation methodology in Schedule 39 to Duke and ATSI even if Schedule 39 is inconsistent with the terms of the pre-withdrawal Tariff. The Commission stated that the filed rate doctrine would prohibit independent assessment of MVP costs in that situation.<sup>52</sup>

26. Because the Commission found that the MVP cost calculation methodology in Schedule 39 may not be applied to ATSI, it did not reach arguments challenging the imposition on ATSI of costs related specifically to the Michigan Thumb Project<sup>53</sup> or arguments related to whether ATSI retains any MVP cost responsibility under the terms of the ATSI-MISO Exit Fee Agreement.<sup>54</sup>

27. Finally, the Commission denied the requests for rehearing of the Schedule 39 Order, affirming its finding that Schedule 39 is just and reasonable as applied prospectively, because Schedule 39 specifies, on a prospective basis, how MVP cost responsibility for a withdrawing transmission owner is determined and billed under the terms of the MISO Transmission Owners Agreement and the Tariff.<sup>55</sup>

---

<sup>50</sup> *Id.* P 76.

<sup>51</sup> *Id.* P 78.

<sup>52</sup> *Id.* PP 117-119.

<sup>53</sup> *Id.* P 105.

<sup>54</sup> *Id.* P 138.

<sup>55</sup> *Id.* PP 30, 164.

## II. Request for Rehearing

28. Filing Parties argue that the Commission erred in reversing the Presiding Judge's determination that Schedule 39 is consistent with the MVP-related withdrawal obligations of the pre-withdrawal Tariff.<sup>56</sup> They argue that this determination was based on the erroneous conclusion that the pre-withdrawal Tariff provided for allocation of MVP costs only upon cost recovery through the MVP Usage Charge. Filing Parties state that projects become part of the MTEP when the MISO Board votes to include them in Appendix A of the MTEP report and classifies the project as one of the types described in Attachment FF (i.e., a Baseline Reliability Project, a New Transmission Access Project, a Market Efficiency Project, or an MVP).<sup>57</sup> They state that classification of the project as an MVP triggered the allocation of cost responsibility stated in Section III.A.2.g.i of Attachment FF to the pre-withdrawal Tariff, which stated that 100 percent of the annual revenue requirement of each MVP shall be allocated on a system-wide basis.<sup>58</sup> Filing Parties assert that the plain language of Section III.A.2.g.i distinguished between the allocation of MVP costs on a system-wide basis at MISO Board approval from the design of the rate for recovering those costs through the MVP Usage Charge.<sup>59</sup> They state that the Commission recognized this structure when it stated in the MVP order that "MVP costs will be allocated system-wide," while the MVP Usage Charge is the "means of recovering those costs."<sup>60</sup> Filing Parties also state that the Commission in the MVP Order acknowledged that the MVP Usage Charge was a matter of rate design and cost recovery.<sup>61</sup>

29. Filing Parties argue that the Commission clearly rejected in the MVP Orders the unified cost allocation/cost recovery interpretation of Section III.A.2.g.i of Attachment FF to the pre-withdrawal Tariff, and that the Commission failed to explain how its interpretation of that provision comports with the MVP Orders.<sup>62</sup> They state that the

---

<sup>56</sup> Request for Rehearing of Filing Parties at 11 (Request for Rehearing).

<sup>57</sup> *Id.* at 12-13.

<sup>58</sup> *Id.* at 13-14.

<sup>59</sup> *Id.* at 14.

<sup>60</sup> *Id.* at 15 (citing MVP Order, 133 FERC ¶ 61,221 at PP 53, 56).

<sup>61</sup> *Id.* at 15-16 (citing MVP Order, 133 FERC ¶ 61,221 at PP 383-389).

<sup>62</sup> *Id.* at 18.

Commission rejected ATSI and Duke's argument that the usage-based nature of the MVP Usage Charge precluded a withdrawing transmission owner from incurring financial obligations for MVPs, and found that the amounts of any such financial obligations would be determined at the time of withdrawal in the form of an exit fee, which would be assessed regardless of where power is sourced to serve the transmission owner's zonal load.<sup>63</sup> Filing Parties assert that only the process of withdrawal and other costs that a withdrawing member may face were beyond the scope of the MVP Filing.<sup>64</sup> They argue that the Schedule 39 Order further found that Section III.A.2.g.i of Attachment FF explicitly obligated withdrawing MISO transmission owners to pay MVP costs incurred prior to withdrawal, and that Schedule 39 merely clarifies the calculation of that obligation.<sup>65</sup>

30. Filing Parties state that courts and other authorities have long recognized that cost allocation is separate from the design of rates that recover the allocated costs.<sup>66</sup> They assert that Schedule 39 is consistent with the pre-withdrawal Tariff, because MVP costs were allocated to Duke and ATSI under Section III.A.2.g.i of Attachment FF when the MVPs were approved by the MISO Board.<sup>67</sup> They argue that Schedule 39 merely inserts into the Tariff a mechanism for calculating and collecting from a withdrawing transmission owner the MVP costs it incurred, where the pre-withdrawal Tariff previously left those steps to be determined via a negotiated or contested exit fee agreement.<sup>68</sup>

31. Filing Parties also argue that the Commission erred in finding that the pre-withdrawal Tariff allocated MVP costs differently than non-MVP costs, because it found that the language in Section III.A.2.g.i of Attachment FF, i.e., "costs shall be allocated on a system-wide basis...and recovered through an MVP Usage Charge pursuant to Attachment MM," is properly read to describe the allocation methodology to be

---

<sup>63</sup> *Id.* at 17-18 (citing MVP Order, 133 FERC ¶ 61,221 at P 471; MVP Rehearing Order, 137 FERC ¶ 61,074 at P 300).

<sup>64</sup> *Id.* at 17-18 (citing MVP Order, 133 FERC ¶ 61,221 at P 472).

<sup>65</sup> *Id.* at 19 (citing Schedule 39 Order, 138 FERC ¶ 61,140 at P 63).

<sup>66</sup> *Id.* at 19-20.

<sup>67</sup> *Id.* at 20.

<sup>68</sup> *Id.* at 21.



implemented through Attachment MM.<sup>69</sup> First, they state that the pre-withdrawal Tariff used the same syntax (costs shall be allocated...and recovered) with respect to every category of MTEP.<sup>70</sup> Filing Parties assert that MISO Board approval was what put each project into the MTEP, and, because Section III of Attachment FF made no distinction between MTEP projects when it required that the market participants in one or more pricing zones must bear cost responsibility for each project, the Presiding Judge logically concluded that cost responsibility for MVPs was assigned at MISO Board approval just as it is for other MTEP projects.<sup>71</sup> Filing Parties further argue that the Commission's Tariff interpretation cannot be reconciled with Attachment MM, as the purpose of that attachment was to set forth the method for collecting the charges associated with MVPs, and nowhere did Attachment MM refer to the allocation of MVP costs or MVP revenue requirements.<sup>72</sup> They argue that Sections 3 and 4 of Attachment MM were nothing more than a formula rate, and said nothing of establishing monthly cost allocation or assigning cost responsibility.<sup>73</sup>

32. Filing Parties state that the Commission also erred in failing to consider Section 5 of Attachment MM to the pre-withdrawal Tariff and Appendix K of the MISO Transmission Owners Agreement.<sup>74</sup> They state that Section 5 of Attachment MM preserved each transmission owner's right to propose alternative ways "to recover the cost of" MVPs, which directly corresponds to the distinction between cost allocation and cost recovery in Section III.A.2.g.i of Attachment FF. Filing Parties state that Article II, Section D of Appendix K to the MISO Transmission Owners Agreement provided that transmission owners "shall possess the full and exclusive right to submit filings under FPA section 205 with regard to transmission rate design" for rates that affect more than one zone and for "through and out" transactions.<sup>75</sup> They state that Article II, Section E.2

---

<sup>69</sup> *Id.* at 22.

<sup>70</sup> *Id.* (referencing Attachment FF, Section III.A.2.c.ii (Baseline Reliability Projects), Section III.A.2.d.1 (Generation Interconnection Projects), and Section III.A.2.f.i (Market Efficiency Projects)).

<sup>71</sup> *Id.* at 22-23.

<sup>72</sup> *Id.* at 23.

<sup>73</sup> *Id.* at 25-26.

<sup>74</sup> *Id.* at 24.

<sup>75</sup> *Id.* (citing 16 U.S.C. § 824d (2012)).

of Appendix K further provided that MISO and transmission owners may make filings related to cost allocation for “transmission upgrades and other new facilities affecting multiple Tariff Zones,” which they argue clearly includes MVPs. Filing Parties conclude that Appendix K’s division of filing rights undermines the Commission’s claim that MVP cost allocation and recovery are unified, and that the combination of MVP rate design with MVP cost allocation supersedes the transmission owners’ exclusive right to propose changes to the design of the MVP Usage Charge.<sup>76</sup>

33. Filing Parties also argue that the Commission’s ruling that MISO Board approval is unrelated to the allocation of MVP costs is contrary to the plain meaning of the Tariff, even apart from its dependence on the invalid theory that cost allocation and recovery are unified.<sup>77</sup> Filing Parties state that, when the MISO Board adds a project to Appendix A of the MTEP, the project is identified by its Attachment FF category, i.e., Baseline Reliability Project, Market Efficiency Project, or MVP. They state that Attachment FF included provisions addressing how cost responsibility for each type of MTEP project is allocated; therefore, they state that the MISO Board’s approval of a project as an MTEP, of itself, established how costs are allocated.<sup>78</sup> Accordingly, they argue, when the MISO Board approved the MVPs listed in Appendices A and B of Schedule 39 prior to ATSI’s and Duke’s withdrawals, cost responsibility for those projects was allocated system-wide to all transmission customers, and the costs of those projects that were allocated to their zonal loads constituted financial obligations incurred under the MISO Transmission Owners Agreement.<sup>79</sup>

34. Filing Parties state that the Commission erred by overlooking the pre-withdrawal Tariff’s use of almost identical language for other MTEP projects that are allocated at MISO Board approval and that, like Section III.A.2.g.i, distinguished cost allocation from cost recovery.<sup>80</sup> Specifically, they assert that Section III.A.2.c.ii of Attachment FF stated that the portion of certain Baseline Reliability Project costs that is subject to cost-sharing “shall be allocated on a system-wide basis to all [t]ransmission [c]ustomers and recovered

---

<sup>76</sup> *Id.* at 25.

<sup>77</sup> *Id.* at 27-28.

<sup>78</sup> *Id.* at 28.

<sup>79</sup> *Id.* at 28-29.

<sup>80</sup> *Id.* at 30.

through a system-wide rate.”<sup>81</sup> They further assert that Section III.A.2.d.1 stated that the portion of Generator Interconnection Project costs that is subject to cost-sharing “shall be allocated on a system-wide basis and recovered pursuant to Attachment GG of this Tariff.” Finally, they assert that Section III.A.2.f.i stated that 20 percent of the costs of Market Efficiency Projects “shall be allocated on a system-wide basis to all [t]ransmission [c]ustomers and recovered through a system-wide rate.” They state that this correlation between allocation and recovery in the pre-withdrawal Tariff shows that the Commission erred in finding that the pre-withdrawal Tariff treated MVP cost allocation differently than cost allocation for non-MVPs, and in fact, shows that MISO Board approval of MVPs had the same effect regarding the system-wide allocation of MVP costs as did MISO Board approval of other MTEP projects for the system-wide allocation of those costs.<sup>82</sup> Filing Parties argue that there is no support for the Commission’s ruling that they could have modified the Tariff to make clear that MVP costs were allocated to specific transmission owners’ zones at the time of MISO Board approval prior to the submission of Schedule 39, because Section III.A.2.g.i of Attachment FF already expressly provided for the allocation of MVP costs system-wide.<sup>83</sup>

35. Filing Parties state that, once the Commission reverses its decision that the Schedule 39 cost calculation methodology is not consistent with the pre-withdrawal Tariff, several of the Commission’s other determinations in the Order on Initial Decision must be revised, and the Commission must consider other arguments that it did not reach. First, they assert that the imposition of the Schedule 39 methodology to Duke and ATSI would no longer violate the filed rate doctrine or the rule against retroactive ratemaking.<sup>84</sup> Second, they state that the Commission should affirm the Presiding Judge’s adoption of the amounts of MVP costs owed by ATSI and Duke.<sup>85</sup> Third, they assert that the Commission should affirm the Presiding Judge’s ruling that the Michigan Thumb Project was properly approved as an MVP, and thus ATSI is responsible for its share of costs related to that project.<sup>86</sup> Fourth, they argue that the Commission should

---

<sup>81</sup> *Id.*

<sup>82</sup> *Id.* at 30-31.

<sup>83</sup> *Id.* at 31.

<sup>84</sup> *Id.* at 32-36.

<sup>85</sup> *Id.* at 37.

<sup>86</sup> *Id.* at 37-44.

affirm the Presiding Judge's ruling that the ATSI-MISO Exit Fee Agreement does not absolve ATSI of liability for MVP-related financial obligations arising under the pre-withdrawal Tariff.<sup>87</sup>

36. On December 14, 2015, ATSI filed a motion for leave to answer and answer to the request for rehearing.

### **III. Discussion**

#### **A. Procedural Matters**

37. Rule 713(d) of the Commission's Rules of Practice and Procedure<sup>88</sup> prohibits an answer to a request for rehearing. Accordingly, we reject ATSI's answer to the request for rehearing.

#### **B. Commission Determination**

38. We will deny the request for rehearing. First, we reject the argument that the Commission's decision is an arbitrary and capricious departure from Commission precedent. Filing Parties cite to statements in the MVP Orders out of context in an attempt to argue that the Commission previously found that the allocation of MVP costs is separate from the recovery of those costs through the MVP Usage Charge.<sup>89</sup> In the MVP Orders, the Commission approved the MVP Usage Charge as a just and reasonable means of assessing the costs of MVPs, but the Commission did not address the specific point in time that initial MVP cost allocation would occur under the terms of the pre-withdrawal Tariff. That question was not decided by the Commission until the Commission issued the Order on Initial Decision.

39. Filing Parties also argue that the Commission's interpretation of the pre-withdrawal Tariff was previously rejected in the MVP Orders when the Commission rejected ATSI's and Duke's argument that MVP costs should not be among the financial obligations that are incurred by withdrawing transmission owners under Section III.A.2.j of Attachment FF to the pre-withdrawal Tariff.<sup>90</sup> We disagree. As noted above, the

---

<sup>87</sup> *Id.* at 44-66.

<sup>88</sup> 18 C.F.R. § 385.713(d)(1) (2015).

<sup>89</sup> Request for Rehearing at 15 (citing MVP Order, 133 FERC ¶ 61,221 at PP 53, 56).

<sup>90</sup> Request for Rehearing at 17-18.

Commission in the MVP Orders made no determination as to when MVP costs are allocated. The Commission in the MVP Orders did not reach the question of which MVP costs would be considered “financial obligations incurred,” but rather found that the particular costs that a withdrawing member may face were outside the scope of the proceeding.<sup>91</sup> As noted in the Order on Initial Decision, the U.S. Court of Appeals for the Seventh Circuit recognized that the MVP Orders did not reach the question of whether Duke and ATSI are responsible for MVP costs;<sup>92</sup> that question, along with the related question of when MVP costs were allocated to ATSI and Duke, were before the Commission for the first time when it issued the Schedule 39 Order.<sup>93</sup>

40. Filing Parties further argue that the RECB Orders held that the costs of MTEP projects that were allocated to zonal load prior to a transmission owner’s withdrawal constituted “financial obligations incurred” within the meaning of Article Five, Section II.B of the MISO Transmission Owners Agreement.<sup>94</sup> However, those orders are inapposite, as they were issued before MVPs were accepted as a new category of transmission project and therefore only addressed cost allocation for Baseline Reliability Projects, Generation Interconnection Projects, and Market Efficiency Projects. We also find no merit in Filing Parties’ argument that the Order on Initial Decision endorsed a “unified cost allocation/cost recovery” interpretation of Section III.A.2.g.i of Attachment FF to the pre-withdrawal Tariff. The issue before the Commission in the Order on Initial Decision was the point in time at which MVP costs were allocated to ATSI and Duke under the specific language of the pre-withdrawal Tariff that was in effect when ATSI and Duke withdrew from MISO and the MISO Transmission Owners Agreement. The Commission did not make any findings with respect to the relationship between cost allocation and cost recovery, and MVP cost recovery was not an issue before the Commission. The Commission made the narrow finding that the pre-withdrawal Tariff in effect at the time of ATSI’s and Duke’s withdrawals did not provide for the up-front

---

<sup>91</sup> MVP Order, 133 FERC ¶ 61,221 at PP 471-472; MVP Rehearing Order, 137 FERC ¶ 61,074 at PP 321-323.

<sup>92</sup> Order on Initial Decision, 153 FERC ¶ 61,101 at P 70 (citing *Ill. Commerce Comm’n v. FERC*, 721 F.3d 764, 780 (7th Cir. 2013)).

<sup>93</sup> Schedule 39 Order, 138 FERC ¶ 61,140 at P 3 (setting for hearing “whether ATSI and Duke are responsible for MVP costs and, if so, the amount of, and methodology for calculating, ATSI’s and Duke’s MVP cost responsibility”).

<sup>94</sup> Request for Rehearing at 28 (citing RECB II Order, 118 FERC ¶ 61,209 at P 193; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

allocation of MVP costs; rather Section III.A.2.g.i of Attachment FF provided that the annual revenue requirement associated with each MVP was allocated based upon each transmission customer's monthly use of the MISO system during that year.<sup>95</sup> Thus, the general distinction between cost allocation and cost recovery is irrelevant to the Commission's determination in the Order on Initial Decision.

41. Furthermore, we find nothing in the request for rehearing that persuades us to change our previous determination that the usage-based nature of the MVP cost allocation method is a departure from the method for allocating non-MVP costs.<sup>96</sup> Prior to MVPs, MISO funded non-MVPs through a fixed, one-time allocation of costs when a transmission project was approved by the MISO Board. The usage-based method of allocating MVP costs was specifically intended to change the paradigm of MISO's former practice of making fixed-percentage cost allocations at the time of MISO Board approval for non-MVPs. In fact, MISO and the MISO transmission owners concede as much when they explain that "the MVP cost allocation proposal does not make an up-front allocation of costs based on an analysis of benefits and usage at a specific point in time, but instead allocates costs based on usage over time, which helps ensure that as usage and benefits change, cost allocation also will change accordingly."<sup>97</sup> Therefore, we will deny rehearing with respect to arguments that the Commission erred in finding that the pre-withdrawal Tariff allocated MVP costs differently than non-MVP costs.

42. Filing Parties also argue that the pre-withdrawal Tariff used the same syntax (costs shall be allocated...and recovered) with respect to every category of MTEP, and, therefore, did not allocate MVP costs differently than non-MVP costs.<sup>98</sup> We find that the Commission previously addressed this issue, and we are not persuaded to reach a different conclusion here.<sup>99</sup> The Commission recognized that "Sections III.A.2.c.ii and III.A.2.f of Attachment FF provided that 20 percent of the costs of Baseline Reliability Projects and Market Efficiency Projects were allocated on a system-wide basis and recovered through a system-wide rate[.]" However, the Commission found that the pre-withdrawal Tariff (1) did not contain language in the MVP provisions with respect to

---

<sup>95</sup> Order on Initial Decision, 153 FERC ¶ 61,101 at P 77.

<sup>96</sup> *Id.* PP 75, 77.

<sup>97</sup> MVP Filing, Transmittal Letter at 25-26.

<sup>98</sup> Request for Rehearing at 22.

<sup>99</sup> *See* Order on Initial Decision, 153 FERC ¶ 61,101 at PP 76-77.

MISO Board approval or an up-front allocation of costs and (2) did not specify zonal allocation of the costs of MVPs in Appendix A of the MTEP as it did for non-MVPs.<sup>100</sup> Therefore, we will deny Filing Parties' rehearing request.

43. We are also not persuaded by Filing Parties' argument that the allocation of MVP costs on a usage basis under the pre-withdrawal Tariff supersedes the transmission owners' exclusive right to propose changes to the cost recovery and rate design of the MVP Usage Charge under Section 5 of Attachment MM to the pre-withdrawal Tariff and Appendix K to the MISO Transmission Owners Agreement. The MISO transmission owners jointly filed both the MVP proposal (including the MVP Usage Charge) and Schedule 39 for the Commission's consideration, and the Commission's findings in the Order on Initial Decision have no effect on the section 205 filing rights of the MISO transmission owners.

44. Because we affirm our decision that the Schedule 39 cost calculation methodology is not consistent with the pre-withdrawal Tariff, and therefore the Schedule 39 methodology of MVP cost allocation may not be applied to Duke and ATSI for the MVPs listed in Appendices A and B of Schedule 39, we do not reach the remaining arguments in the request for rehearing that: (1) the imposition of the Schedule 39 methodology to Duke and ATSI would no longer violate the filed rate doctrine or the rule against retroactive ratemaking; (2) the Commission should affirm the Presiding Judge's adoption of the amounts of MVP costs owed by ATSI and Duke; (3) the Commission should affirm the Presiding Judge's ruling that the Michigan Thumb Project was properly approved as an MVP, and thus ATSI is responsible for its share of costs related to that project; and (4) the Commission should affirm the Presiding Judge's ruling that the ATSI-MISO Exit Fee Agreement does not absolve ATSI of liability for MVP-related financial obligations arising under the pre-withdrawal Tariff.

---

<sup>100</sup> *Id.* P 77.

The Commission orders:

The request for rehearing of the Order on Initial Decision is hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.