

154 FERC ¶ 61,217
 UNITED STATES OF AMERICA
 FEDERAL ENERGY REGULATORY COMMISSION

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

PJM Interconnection, L.L.C.	Docket Nos. ER11-2814-001 ER11-2815-001 ER11-2814-002 ER11-2814-004 ER11-2815-002 ER11-2815-003 ER11-2815-004 ER11-2815-006
Midwest Independent Transmission System Operator, Inc.	ER11-3279-001 ER11-3279-002 ER11-3279-003

ORDER DENYING REHEARING, GRANTING CLARIFICATION IN PART, AND
 ACCEPTING COMPLIANCE FILINGS SUBJECT TO CONDITION

(Issued March 17, 2016)

Paragraph Numbers

I. Background.....	4.
II. RTO Realignment Filings.....	7.
A. PJM Realignment Filing	7.
B. MISO Realignment Filing.....	10.
III. ATSI’s Requests for Rehearing.....	13.
A. Request for Rehearing of the PJM Order, Docket Nos. ER11-2814-002 and ER11-2815-003.....	13.
B. Request for Rehearing of the MISO Order, Docket No. ER11-3279-002.....	17.
C. Discussion.....	18.

1. Procedural Matters.....	18.
2. Commission Determination.....	21.
IV. MISO Parties' Request for Clarification of the MISO Order	27.
A. MISO Parties' Request for Clarification of the MISO Order, Docket No. ER11-3279-002.....	27.
B. ATSI's Answer to the MISO Parties' Motion for Clarification	32.
1. Commission Determination.....	34.
V. Compliance Filings	45.
A. PJM Integration.....	45.
1. ATSI June 30, 2011 Compliance Filing, Docket Nos. ER11-2814-001 and ER11-2815-002 and December 13, 2014 Compliance Errata, Docket No. ER11-2815-004	45.
a. ATSI June 30, 2011 Compliance Filing.....	45.
b. ATSI December 13, 2011 Compliance Errata.....	46.
c. Notice of Filings and Responsive Pleadings.....	47.
d. Procedural Matters.....	49.
e. Protests & Answers	50.
f. Commission Determination.....	62.
2. PJM June 13, 2011 Compliance Filing, Docket No. ER11-2815-001	66.
a. PJM June 13, 2011 Compliance Filing.....	66.
b. Notice of Filing and Responsive Pleadings	67.
c. Commission Determination.....	68.
B. MISO Exit Obligations.....	69.
1. MISO Parties' Compliance Filing, Docket No. ER11-3279-001	69.
2. ATSI June 30, 2011 Compliance Report, Docket No. ER11-3279-001	70.
3. Notice and Responsive Pleadings	72.
a. ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing.....	74.
b. MISO Parties Answer to the ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing.....	84.
c. MISO Parties Motion to Reject the ATSI June 30, 2011 Compliance Report.....	89.
d. ATSI Answer to the MISO Parties' Motion to Reject.....	95.
4. Commission Determination.....	100.
a. Procedural Matters	100.
b. Substantive Matters	101.
VI. Settlement Agreements.....	104.
A. Settlement Agreements	104.
B. Order Rejecting Settlements.....	106.
C. Requests for Rehearing of the Order Rejecting Settlements, Docket Nos. ER11-2814-004, ER11-2815-006 and ER11-3279-003	108.
D. Commission Determination.....	128.
1. Procedural Matters.....	128.
2. Substantive Matters	130.

1. On May 31, 2011, the Commission issued an order accepting subject to condition a proposal by American Transmission Systems, Inc. (ATSI) and PJM Interconnection, L.L.C. (PJM) to make revisions to the PJM Open Access Transmission Tariff (PJM Tariff) in connection with ATSI's decision to realign its Regional Transmission Organization (RTO) status by leaving the RTO operated by Midwest Independent Transmission System Operator Inc. (MISO),¹ and integrating into the RTO operated by PJM.² The principal condition was that ATSI remove proposed revisions to the PJM Tariff which provided for the recovery of exit fees and legacy transmission costs ATSI incurred as a result of its corporate decision to leave MISO. The Commission found that ATSI had not shown that the benefits of realigning with PJM justified those costs. The Commission also accepted, suspended, and set for hearing and settlement judge procedures, ATSI's proposed formula rate protocols. In the PJM Order, the Commission accepted and suspended ATSI's proposed formula rate tariff provisions, subject to refund and to ATSI submitting a compliance filing removing from its formula rates the ATSI Internal Integration Costs, PJM Integration Costs, and MISO Exit Fees, including Legacy MTEP Project costs.³

2. In a concurrent order,⁴ the Commission accepted subject to condition MISO's, MISO Transmission Owners',⁵ and ATSI's (collectively, MISO Applicants) proposed

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

² *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,198 (2011) (PJM Order).

³ *Id.* P 60.

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,204 (2011) (MISO Order).

⁵ For the purposes of this filing, MISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company and Ameren Transmission Company of Illinois; American Transmission Company LLC; American Transmission Systems, Inc.; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary, Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company;

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Schedule 37, as well as other proposed revisions, to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) reflecting the treatment of costs of certain projects upon the withdrawal of ATSI from MISO.⁶ On September 19, 2013, the Commission rejected settlement agreements intended to resolve all pending issues in the underlying proceedings.⁷

3. In this order, we: (1) deny rehearing of the PJM Order; (2) deny rehearing of the MISO Order, and grant clarification, in part; (3) deny rehearing of the Order Rejecting Settlements; (4) accept the ATSI June 30, 2011 Compliance Filing;⁸ (5) accept the PJM June 13, 2011 Compliance Filing⁹ and ATSI December 13, 2011 Compliance Filing

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 Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

⁶ MISO Order, 135 FERC ¶ 61,204. Schedule 37 defines certain transmission projects identified in the MISO Transmission Expansion Plan (MTEP) and was approved by the MISO Board of Directors prior to ATSI's May 31, 2011 exit from MISO. Schedule 37 addresses MTEP Projects approved for regional cost sharing as either Baseline Reliability Projects or Market Efficiency Projects. Schedule 37 does not address the recovery of Multi Value Project costs.

⁷ *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,207 (2013) (Order Rejecting Settlements).

⁸ On June 30, 2011, ATSI submitted a compliance filing in Docket Nos. ER11-2814-001 and ER11-2815-002 to address the Commission's conditions in the PJM Order (ATSI June 30, 2011 Compliance Filing).

⁹ On June 13, 2011, PJM filed a compliance filing in Docket No. ER11-2815-001 proposing revisions to correct typographical errors in Attachment J of the PJM Tariff (PJM June 13, 2011 Compliance Filing).

Errata;¹⁰ (6) conditionally accept the MISO Parties June 30, 2011 Compliance Filing;¹¹ and (7) reject the ATSI June 30, 2011 Compliance Report.¹²

I. Background

4. ATSI is a transmission-only utility, which owns, operates, and maintains transmission facilities in Ohio and western Pennsylvania.¹³ ATSI joined MISO effective October 1, 2003.¹⁴ On August 17, 2009, ATSI requested that the Commission: (1) conditionally approve, subject to the submission of related filings, the termination of its status as a transmission operator, owner, and local balancing authority in MISO; and (2) make additional findings regarding ATSI's planned integration into the PJM RTO, to be effective June 1, 2011. On December 17, 2009, the Commission authorized, subject to certain conditions, ATSI's request to withdraw from MISO and to integrate into PJM.¹⁵

¹⁰ On December 13, 2011, ATSI submitted an errata to the ATSI June 30, 2011 Compliance Filing in Docket No. ER11-2815-004 (ATSI December 13, 2011 Compliance Filing Errata).

¹¹ On June 30, 2011, MISO and MISO Transmission Owners (MISO Parties) submitted a filing revising the MISO Tariff in response to the Commission's condition in the MISO Order in Docket No. ER11-3279-001 (MISO Parties June 30, 2011 Compliance Filing).

¹² On June 30, 2011, ATSI submitted a compliance report in response to the Commission's condition in the MISO Order in Docket No. ER11-3279-001 (ATSI June 30, 2011 Compliance Report).

¹³ ATSI is a wholly-owned subsidiary of FirstEnergy Corp.

¹⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,096 (2005). ATSI originally proposed to form Alliance RTO. The Commission declined to approve Alliance as an RTO, but encouraged ATSI to join MISO. *Alliance Cos.*, 97 FERC ¶ 61,327 (2001).

¹⁵ *American Transmission Systems, Inc.*, 129 FERC ¶ 61,249 (2009) (December 17, 2009 Order), *order on reh'g*, 130 FERC ¶ 61,171 (2010). On October 19, 2009, FirstEnergy filed a related complaint seeking an alternative remedy that the assignment of cost responsibility to the ATSI zone load under PJM's existing regional transmission expansion planning (RTEP) protocols, for projects approved by PJM prior to ATSI's proposed date of integration, is unjust, unreasonable, and unduly discriminatory, and asked that the Commission require PJM to revise the PJM Tariff to recognize that ATSI's

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5. In the December 17, 2009 Order, the Commission conditionally authorized ATSI's request to withdraw from MISO, to remove its transmission facilities from the functional control of MISO, and to join PJM. Specifically, the Commission authorized ATSI to terminate its existing obligations to MISO, subject to: (1) the submission of ATSI's proposed replacement rates in a separate filing and, in the context of that filing, consideration of whether ATSI's existing customers will have access to continued transmission service, as required under Article Five, Section II.A of the Agreement of Transmission Facilities Owners to Organize the MISO (MISO Transmission Owners Agreement); (2) the submission of a separate filing addressing ATSI's exit fee obligations under Article Five, Section II.B of the MISO Transmission Owners Agreement;¹⁶ (3) the submission of a separate filing addressing ATSI's obligations under Article Five, Section II.C of the MISO Transmission Owners Agreement regarding the construction of new facilities; and (4) ATSI's receipt of all applicable federal and state regulatory approvals, including the Commission's determination that ATSI's proposed replacement arrangements comply with the Commission's *pro forma* Open Access Transmission Tariff (OATT), satisfy the Commission's standards regarding deviations to the *pro forma* OATT, and are otherwise just, reasonable, and not unduly discriminatory.

6. ATSI's RTO realignment decision required the filing of revisions to both the MISO Tariff and PJM Tariff.

II. RTO Realignment Filings

A. PJM Realignment Filing

7. On February 1, 2011, PJM on behalf of ATSI submitted modifications to the PJM Tariff, Amended and Restated Operating Agreement of PJM, PJM Reliability Assurance Agreement Among Load Serving Entities in the PJM Region, and PJM Consolidated

entry into PJM will not require that the ATSI zone pay RTEP charges for projects approved prior to June 1, 2011. In the December 17, 2009 Order, the Commission also dismissed the related complaint. *See* December 17, 2009 Order, 129 FERC ¶ 61,249 at P 7.

¹⁶ December 17, 2009 Order, 129 FERC ¶ 61,249 at P 51. Article Five, Section II.B of the MISO Transmission Owners Agreement states: “[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the [MISO] and the withdrawing Owner.” This financial obligation consists of various components, one of which is at issue in this proceeding: the remaining financial obligations incurred under MISO's Regional Expansion Criteria and Benefits cost allocation process prior to the effective date of withdrawal.

Transmission Owners Agreement, in connection with ATSI's integration into PJM, to be effective June 1, 2011 (PJM Realignment Filing). Among other things, ATSI proposed ministerial revisions to add the ATSI Zone and the ATSI Transmission Owner to the PJM Tariff, where needed, and to recover internal integration costs, including incremental expenses incurred by the company in making the decision to transition to PJM (ATSI Internal Integration Costs).¹⁷ ATSI also proposed revisions to its formula rate provisions in the PJM Tariff designed to recover the costs incurred in connection with ATSI's withdrawal from MISO and integration into PJM (RTO Transition Costs). The RTO Transition Costs fell into two categories: (1) the withdrawal obligation that MISO will bill ATSI on behalf of load in the ATSI Zone (MISO Exit Fees)¹⁸ and Legacy MTEP Project costs;¹⁹ and (2) costs that PJM charged ATSI to prepare for ATSI's integration (PJM Integration Costs).²⁰ In addition, ATSI proposed revisions to the PJM Tariff to set forth the method by which transmission customers taking service for deliveries in the ATSI Zone are charged for the Legacy MTEP Projects constructed by remaining Midwest ISO transmission owners.²¹ ATSI's proposed formula rate revisions would allow for the recovery of costs for Legacy MTEP Projects from ATSI's wholesale transmission customers and provide a credit to its wholesale transmission customers for any amounts received from MISO for MTEP Projects constructed by ATSI, which have been allocated to remaining MISO zones.²²

¹⁷ PJM Realignment Filing at 17. ATSI planned to recover the internal integration costs in the rate year after its integration into PJM.

¹⁸ MISO Exit Fees include financial withdrawal obligations under MISO Tariff Schedules 10, 16 and 17. These schedules do not address Legacy MTEP Project costs.

¹⁹ The MISO Parties identify these same MTEP Projects that MISO Transmission Owners have constructed, or will construct, and ATSI remains financially obligated, as "Legacy MTEP Projects." MISO Parties June 30, 2011 Compliance Filing at 3.

²⁰ *Id.* at 19.

²¹ *Id.* at 14-15.

²² Specifically, ATSI proposed a revision to its formula rate which sets forth the method by which its transmission customers are charged for MTEP Projects constructed by remaining MISO Transmission Owners, the method by which PJM will transmit the revenues received from its transmission customers to MISO for distribution to MISO Transmission Owners, as well as the manner by which PJM will distribute revenues received from MISO for MTEP Projects ATSI is obligated to construct to ATSI.

8. In the PJM Order, the Commission accepted and suspended ATSI's proposed formula rate tariff provisions, effective June 1, 2011, subject to refund and to ATSI submitting a compliance filing within 30 days of the date of the order removing from its formula rates the ATSI Internal Integration Costs, PJM Integration Costs, MISO Exit Fees, and Legacy MTEP Project costs.²³ The Commission explained that its finding was without prejudice to ATSI submitting a new filing under section 205 of the Federal Power Act (FPA),²⁴ seeking recovery of the costs.²⁵ The Commission stated that, if ATSI makes such a filing, "it should specifically identify the benefits of the RTO realignment decision with respect to its wholesale transmission customers and include a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment, *i.e.*, the PJM Integration Costs, deferred integration costs, and MISO exits fees, including Legacy MTEP costs."²⁶ The Commission also accepted PJM's proposed ministerial revisions, subject to condition, and set ATSI's proposed formula rate protocols for hearing and settlement judge proceedings.²⁷

9. On June 30, 2011, ATSI submitted a request for rehearing of the PJM Order.

B. MISO Realignment Filing

10. On April 1, 2011, the MISO Applicants proposed a new Schedule 37 (MISO Transmission Expansion Plan Project Cost Recovery for ATSI Zone) and proposed revisions to Attachment GG (Network Upgrade Charge) to the MISO Tariff reflecting the treatment of costs of the Legacy MTEP Projects upon the withdrawal of ATSI from MISO, to be effective June 1, 2011 (MISO Realignment Filing). The MISO Applicants contended that the revisions were necessary because, after ATSI's integration into PJM, the remaining MISO Transmission Owners would continue to be obligated to construct

²³ PJM Order, 135 FERC ¶ 61,198 at P 60.

²⁴ 16 U.S.C. § 824d (2012).

²⁵ PJM Order, 135 FERC ¶ 61,198 at P 60.

²⁶ *Id.*

²⁷ On July 27, 2011, ATSI submitted a settlement (Protocols Settlement) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 C.F.R. § 385.206 (2015)) resolving the formula rate protocol matters set for hearing and settlement judge procedures by the Commission in its PJM Order. *See PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,206 (2013) (approving the Protocols Settlement).

Legacy MTEP Projects, and wholesale transmission customers serving load in the ATSI zone would continue to be obligated to pay a portion of the cost of these projects.

11. On May 31, 2011, in the MISO Order, the Commission, consistent with the PJM Order, conditionally accepted the MISO Realignment Filing subject to a compliance filing to: (1) remove or modify certain language suggesting that ATSI's wholesale transmission customers bear responsibility for any remaining financial obligation for Legacy MTEP Project costs; and (2) revise Attachment GG to clarify revenue sharing for Point-to-Point transmission service reservations following ATSI's withdrawal.²⁸

12. On June 30, 2011, ATSI submitted a request for rehearing of the MISO Order. Also on June 30, 2011, MISO Parties²⁹ requested clarification, or in the alternative, rehearing of the MISO Order. On July 15, 2011, ATSI submitted an answer to the MISO Parties' request for clarification.

III. ATSI's Requests for Rehearing

A. Request for Rehearing of the PJM Order, Docket Nos. ER11-2814-002 and ER11-2815-003

13. ATSI contends that the Commission erred in characterizing Legacy MTEP Project costs as MISO Exit Fees and therefore inappropriately conditioned recovery of these costs subject to a cost-benefit analysis. ATSI contends that Legacy MTEP Project costs are not costs incurred by MISO, but costs incurred by MISO Transmission Owners to construct certain transmission upgrades.³⁰ ATSI argues that Legacy MTEP Project costs are existing costs that ATSI zone transmission customers were paying under the MISO Tariff prior to ATSI's departure, and that ATSI customers would have continued to pay the Legacy MTEP Project cost if ATSI had not departed from MISO. ATSI explains that MISO Exit Fees include ATSI's share of MISO long-term liabilities that are normally designed to recover financial obligations incurred by MISO to support transmission service, firm transmission rights, and the energy market. Further, ATSI argues that the Exit Fee Agreement supports that the exit fee covers only financial obligations of MISO, and that the Commission's acceptance demonstrates that Legacy MTEP Project costs are

²⁸ MISO Order, 135 FERC ¶ 61,204 at PP 13-14.

²⁹ The MISO Parties do not include ATSI.

³⁰ ATSI Request for Rehearing of the PJM Order at 9.

not a component of MISO Exit Fees.³¹ As such, ATSI argues that continued recovery of the Legacy MTEP Project costs does not produce higher rates to ATSI zone transmission customers because those customers were obligated to pay and were paying the same costs in their rates under the MISO Tariff.³² Moreover, ATSI argues that the continued recovery of the Legacy MTEP Project costs does not produce higher rates to ATSI zone transmission customers, and that ATSI did not propose an increase in the rates paid by ATSI zone transmission customers to recover the Legacy MTEP Project costs. Instead, ATSI states that it proposed only the mechanisms necessary in the MISO Tariff and PJM Tariff to allow the continued collection of the ATSI zone transmission customers' share of these costs after ATSI's departure from MISO.³³

14. Further, ATSI contends that the Commission in the PJM Order did not explain why a comparison of costs and benefits is required to justify the continued recovery of costs that were recovered from ATSI zone transmission customers under the MISO Tariff under the rates that the Commission previously accepted as just and reasonable.³⁴ ATSI alleges that, because the costs to ATSI zone transmission customers for Legacy MTEP Projects are not increased, no quantification of benefits is necessary to show that those customers are not disadvantaged. ATSI argues that, in denying the continued recovery of Legacy MTEP Project costs from ATSI zone transmission customers, the Commission departed from precedent that provides that challenges to unchanged components of existing rates are outside the scope of a section 205 proceeding.³⁵

15. ATSI contends that the Commission failed to explain why it is just and reasonable to terminate ATSI transmission customers' contribution to the costs of Legacy MTEP Projects constructed by transmission owners that remain in MISO. ATSI asserts that the Commission does not appreciate that the revenues produced by the ATSI zone transmission customers' continued payment of Legacy MTEP Project costs would flow not to ATSI, but to the remaining MISO Transmission Owners, who would credit those

³¹ *Id.* at 15. See *Midwest Independent Transmission System Operator, Inc.*, 135 FERC ¶ 61,255 (2011) (accepting Exit Fee Agreement, subject to compliance filing). See also *Midwest Independent Transmission System Operator, Inc.*, Docket No. ER11-3415-001 (Feb. 4, 2013) (delegated letter order).

³² ATSI Request for Rehearing of the PJM Order at 15.

³³ *Id.* at 16.

³⁴ *Id.* at 17.

³⁵ *Id.* at 19.

revenues to their respective revenue requirements.³⁶ ATSI also contends that the Commission does not attempt to reconcile the elimination of those payments with the continued allocation of a portion of the costs of MTEP Projects constructed by ATSI before its departure from MISO to customers in the zones of remaining MISO Transmission Owners.

16. ATSI also argues that the Commission erred in denying recovery of RTO Transition Costs. ATSI contends that making the costs of the RTO realignment decision subject to a cost-benefit analysis showing that the benefits to wholesale customers exceed the costs of the realignment represents a new requirement for the recovery of RTO transition costs, a departure from Commission precedent, and is not supported by the section 205 requirement that rates be just and reasonable. ATSI argues that in past decisions concerning RTO integration and migrations, the Commission has allowed a public utility that voluntarily places its transmission facilities under the operational control of an RTO to recover the costs it incurs to transition to RTO participation.³⁷

B. Request for Rehearing of the MISO Order, Docket No. ER11-3279-002

17. Repeating arguments included in its request for rehearing of the PJM Order, ATSI argues that the Commission should reverse its finding in the MISO Order rejecting all provisions dealing with the calculation of ATSI zone transmission customers' share of Legacy MTEP Project costs and the distribution of resulting payments. ATSI contends that the Commission's finding was based on its erroneous decision in the PJM Order that Legacy MTEP Project costs cannot be recovered from ATSI's wholesale transmission

³⁶ *Id.* at 19-20.

³⁷ *Id.* at 22-23 (citing *Virginia Electric & Power Co.*, 125 FERC ¶ 61,391 (2008), *reh'g denied*, 128 FERC ¶ 61,026 (2009); *New York Independent System Operator, Inc.*, 92 FERC ¶ 61,180 (2000) (approving uncontested settlement agreement authorizing transmission owners to recover \$54.9 million in RTO start-up and formation costs); *PJM Interconnection, L.L.C. and Allegheny Power*, 96 FERC ¶ 61,060, at 61,222-23 (2001) (authorizing transmission owner joining PJM to recover transitional surcharges subject to provision of cost justification), *order approving uncontested settlement*, 100 FERC ¶ 61,088 (2002); *American Electric Power Service Corp.*, 113 FERC ¶ 63,031 (certification of uncontested settlement that included recovery by transmission owner of RTO start-up costs of \$2.3 million per year for 15 years), *order approving uncontested settlement*, 113 FERC ¶ 61,294 (2005), *as corrected*, 115 FERC ¶ 61,114 (2006)).

customers without a further showing of benefits to wholesale transmission customers that outweigh those costs.³⁸

C. Discussion

1. Procedural Matters

18. On July 15, 2011, the MISO Transmission Owners, and the Office of the Ohio Consumers' Counsel submitted answers in response to ATSI's request for rehearing of the PJM Order, and on August 1, 2011, ATSI filed an answer in response.

19. On July 15, 2011, the MISO Parties submitted a limited answer in response to ATSI's request for rehearing of the MISO Order. On August 1, 2011, ATSI submitted an answer in response to the MISO Parties' limited answer.

20. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits answers to a request for rehearing. Therefore, we reject the answers to the requests for rehearing and responsive pleadings.

2. Commission Determination

21. We will deny ATSI's requests for rehearing of the PJM Order and the MISO Order.

22. On rehearing ATSI maintains that the Commission erred in not permitting recovery of RTO realignment costs, including Legacy MTEP Project costs, without a showing that those costs provide benefits to its customers.³⁹

23. We disagree. The RTO realignment was a voluntary decision by ATSI to change from one RTO to another. While ATSI is correct that the Commission has permitted transmission owners to recover the costs of joining an RTO, the Commission has permitted such recovery because joining an RTO provides benefits to the transmission owner's customers through more efficient dispatch of generation as well as more efficient utilization of the larger transmission system. As the Commission has explained:

The Commission's long-standing policy is to encourage and promote RTO formation and, consistent with this policy, to

³⁸ ATSI Request for Rehearing of the MISO Order at 6.

³⁹ ATSI has not made a filing to show that the benefits to its wholesale transmission customers exceed the costs of the RTO realignment.

permit utilities to recover their prudently-incurred RTO formation costs. . . . These start-up costs are considered by the Commission to be an investment in a more efficient method of buying and selling electricity with benefits that accrue to wholesale ratepayers into the future.⁴⁰

24. The choice to change RTOs does not necessarily provide comparable benefits to the customers because they already enjoy these efficiency benefits in the RTO to which they belong. Moreover, transmission owners may choose to change RTOs based on factors unrelated to customer benefits, such as the benefits to their affiliated generation from differing market rules used by the RTOs. The Commission recognized the difference between joining an RTO for the first time and switching RTOs in the December 17, 2009 Order on ATSI's request to change RTOs:

Transmission owners that seek to change RTOs should be prepared to assume the costs attributable to their decisions. ATSI is permitted to balance the benefits it associates with its decision to join PJM under its existing tariff against the costs it anticipates it will incur in exiting the [MISO] and joining PJM to determine whether such a move is cost-justified.⁴¹

We reaffirm our finding that, when a transmission owner seeks to realign its RTO commitments and seeks to allocate costs to its wholesale transmission customers, it must include a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment.⁴²

25. On rehearing, ATSI also contends that Legacy MTEP Projects costs are not costs associated with the RTO realignment decision, and the Commission incorrectly characterized these costs as a component of the MISO Exit Fees. We disagree. While not included in MISO Exit Fees, the Legacy MTEP Project costs are appropriately costs associated with the RTO realignment decision. The Legacy MTEP Projects are certain transmission projects previously identified in the MISO MTEP and approved by the MISO Board of Directors prior to ATSI's integration into PJM. Under the MISO Tariff, all transmission owners in MISO are responsible for their proportionate share of all

⁴⁰ *Virginia Electric & Power Co.*, 128 FERC ¶ 61,026 at P 19. The cases cited by ATSI deal with transmission owners joining an RTO for the first time.

⁴¹ December 17, 2009 Order, 129 FERC ¶ 61,249 at P 113.

⁴² PJM Order, 135 FERC ¶ 61,198 at P 60.

transmission costs incurred while they were members of MISO.⁴³ However, once ATSI changes RTOs, these costs do not necessarily benefit the ATSI transmission customers since they currently receive service using the PJM transmission system. As the Commission previously found, ATSI's customers are responsible for paying for all the costs of the PJM system since they are receiving service using those facilities.⁴⁴ ATSI's customers, however, are no longer receiving benefits from the MISO facilities after ATSI's withdrawal as they would if ATSI had remained in MISO. As discussed below, ATSI's obligation to pay the Legacy MTEP Project costs is a corporate obligation based on its agreement with the other MISO Transmission Owners. We reaffirm the Commission's finding that ATSI cannot recover Legacy MTEP Project costs without a further showing that the benefits to wholesale transmission customers exceed the costs of the realignment.⁴⁵

26. Because the ATSI rehearing request of the MISO Order repeats arguments that are raised in the rehearing request of the PJM Order, we will also deny the ATSI request for rehearing of the MISO Order, for the reasons discussed above. Lastly, ATSI argues that the Commission's determination that ATSI, not ATSI's wholesale transmission customers, is responsible for paying Legacy MTEP Project costs does not reconcile with the fact that the MISO Transmission Owners' wholesale transmission customers - not MISO Transmission Owners - will continue to pay for MTEP Projects that ATSI

⁴³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221, at P 471 (2010) (MVP Order), *order on reh'g*, 137 FERC ¶ 61,074, at P 322 (2011) (MVP Rehearing Order) (collectively, MVP Orders).

⁴⁴ *American Transmission System, Inc.*, 140 FERC ¶ 61,226, at P 26 (2012) ("even if a new member was not using the system when a particular project was planned or authorized, the new member may nevertheless use and benefit from the new facility in the future").

⁴⁵ *See, e.g., PJM Interconnection, L.L.C.*, 139 FERC ¶ 61,068, at P 78 (2012) (stating that a cost-benefit study needs to include the full range of costs and benefits to which wholesale transmission customers will be exposed); *see also* PJM Order, 135 FERC ¶ 61,198 at P 60 (stating that ATSI may submit a new section 205 filing seeking recovery of Legacy MTEP costs, and that if ATSI makes such a filing, it should specifically identify the benefits of the RTO realignment decision with respect to its wholesale transmission customers and include a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of realignment); MISO Order, 135 FERC ¶ 61,204 at P 13 (stating that ATSI cannot recover Legacy MTEP Project costs without a further showing).

constructed.⁴⁶ Although ATSI is correct that MISO Transmission Owners' wholesale transmission customers, and not MISO Transmission Owners, will continue to pay for MTEP Projects that ATSI constructed, we disagree with ATSI that this is inconsistent with our findings regarding recovery of Legacy MTEP Project costs from ATSI's wholesale transmission customers. MISO Transmission Owners have not withdrawn from MISO, and, therefore, MISO Transmission Owners and their wholesale transmission customers are not similarly situated to ATSI and its wholesale customers.

IV. MISO Parties' Request for Clarification of the MISO Order

A. MISO Parties' Request for Clarification of the MISO Order, Docket No. ER11-3279-002

27. On June 30, 2011, the MISO Parties submitted a motion for clarification or in the alternative request for rehearing of the MISO Order. The MISO Parties request that the Commission clarify that, while ATSI failed to demonstrate that ATSI is entitled to recover its Legacy MTEP Project costs from its transmission customers, MISO and the remaining MISO Transmission Owners remain entitled to recover the costs allocated to the ATSI zone from ATSI, and to do so by invoicing PJM (as agent for ATSI) as proposed in the MISO Realignment Filing. The MISO Parties argue that whether ATSI is ultimately permitted to pass these costs through to its customers is an issue for the Commission to decide in a proceeding involving a new section 205 filing submitted by ATSI seeking recovery of these costs, but this issue should not prevent MISO from recovering Legacy MTEP Projects costs to which it is entitled.⁴⁷ The MISO Parties state that if the Commission declines to grant the requested clarification, the MISO Order would remain ambiguous and subject to the possible interpretation that ATSI is entitled to recover costs for MTEP Projects constructed by ATSI and allocated to MISO customers without any reciprocal recovery by MISO of Legacy MTEP Project costs allocated to the ATSI zone. The MISO Parties assert this would be an unjust and unreasonable outcome because it would result in an inappropriate subsidy by MISO transmission customers to ATSI, and would deny MISO Transmission Owners full just and reasonable cost recovery for projects allocated to the ATSI zone.⁴⁸

⁴⁶ ATSI Request for Rehearing of the PJM Order at 19-20.

⁴⁷ MISO Parties Request for Clarification of the MISO Order at 9.

⁴⁸ *Id.* n.31.

28. The MISO Parties contend that Article V, section II.B of the MISO Transmission Owners Agreement and section III.A.2.j of Attachment FF to the MISO Tariff expressly provide that when an entity withdraws from MISO, the remaining MISO transmission owners and MISO are entitled to recover from the withdrawing entity its remaining financial obligations, including MTEP costs, allocated to the entity's transmission zone prior to its withdrawal.⁴⁹ According to the MISO Parties, the MISO Order recognized this fact; but the Commission required only a compliance filing to remove language suggesting that ATSI's customers bear cost responsibility for Legacy MTEP Projects, without confirming that MISO Transmission Owners may recover these costs from ATSI.⁵⁰

29. In addition, the MISO Parties argue that under the MISO Transmission Owners Agreement, transmission owners that withdraw from MISO are responsible for "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal."⁵¹ They also argue that under Attachment FF of the MISO Tariff, which governs the MTEP process and related cost allocation, "[a] Transmission Owner that withdraws from MISO as a Transmission Owner shall remain responsible for all financial obligations incurred pursuant to this Attachment FF while a Member of the Midwest ISO and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by the Midwest ISO and the withdrawing Member."⁵² The MISO Parties contend that these provisions give MISO the right to recover from a transmission owner the costs associated with all financial obligations, including MTEP costs that were allocated to the transmission owner's zone prior to that transmission owner's withdrawal.⁵³ According to the MISO Parties, the

⁴⁹ *Id.* at 6 (citing MISO Transmission Owners Agreement, Art. V § II.B; MISO Tariff, Attachment FF § III.A.2.j; *Midwest Indep. Transmission Sys. Operator, Inc.* 120 FERC ¶ 61,080, at P 83 (2007) (noting that "[t]he Commission has determined that the cost allocations made under Attachment FF are rightfully included in the 'all financial obligations' contemplated by the [MISO Transmission Owners] Agreement" and denying rehearing of the Commission order on MISO's tariff revisions to incorporate a proposed cost allocation methodology for Regionally Beneficial Projects that was established through MISO's Regional Expansion Criteria and Benefits (RECB) Task Force) (RECB II Rehearing Order)).

⁵⁰ *Id.* at 6-7 (citing MISO Order, 135 FERC ¶ 61,204 at P 2, n.4).

⁵¹ *Id.* at 7 (quoting MISO Transmission Owners Agreement, Art. V § II.B).

⁵² *Id.* (citing MISO Tariff, Attachment FF § III.A.2.j).

⁵³ *Id.* at 8 (citing RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

MISO Order recognized that MISO has the right to recover Legacy MTEP Project costs allocated to the ATSI zone prior to ATSI's withdrawal, but did not specify that MISO may recover these costs from ATSI.⁵⁴

30. In the event the Commission does not grant the MISO Parties' requested clarification, the MISO Parties seek rehearing of the MISO Order. They argue that the MISO Order represents a departure from Commission precedent,⁵⁵ asserting that the Commission previously determined that MISO is entitled to recover MTEP costs allocated to a transmission owner's zone when the transmission owner withdraws from MISO in approving MISO's Regional Expansion Criteria and Benefits (RECB) transmission expansion cost allocation methodology. The MISO Parties argue that, in approving this methodology, the Commission directed MISO to include in its Tariff provisions ensuring that MISO would be permitted to recover from the transmission owner the costs of MTEP facilities allocated to the zone of a transmission owner that withdraws from MISO.⁵⁶ The MISO Parties also state that in the Commission's order approving MISO's RECB compliance filing, the Commission stated that "cost allocations made under Attachment FF are rightfully included in the 'all the financial obligations' contemplated by the [MISO Transmission Owners] Agreement. This treatment is consistent with the Commission's previous actions regarding the creation and inclusion of Schedules 16 and 17 cost allocations into the [MISO Tariff]."⁵⁷ According to the MISO Parties, the Commission reaffirmed its determination regarding MISO's right to recover MTEP costs allocated to the zones of departing transmission owners in MISO's Multi Value Project transmission planning and cost allocation proceeding.⁵⁸

31. The MISO Parties argue that the finding here that MISO is not entitled to recover from ATSI the costs of Legacy MTEP Projects allocated to the ATSI zone prior to ATSI's withdrawal is an arbitrary and capricious departure from this precedent without a reasoned explanation. Further, the MISO Parties argue that, under section 206 of the

⁵⁴ *Id.* at 8-9.

⁵⁵ *Id.* at 2, 5 (citing 16 U.S.C. § 824e (2012)).

⁵⁶ *Id.* at 9 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, at P 193 (2007) (RECB I Order) (accepting, subject to condition, MISO's tariff revisions to incorporate a proposed cost allocation methodology for Regionally Beneficial Projects).

⁵⁷ *Id.* at 11 (quoting RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

⁵⁸ *Id.* (citing MVP Order, 133 FERC ¶ 61,221 at P 471).

FPA,⁵⁹ the Commission is required to determine the existing MISO Tariff provision and MISO Transmission Owners Agreement to be unjust and unreasonable before it may set aside the existing MISO Transmission Owners Agreement and Tariff provisions authorizing MISO to recover MTEP costs allocated to a withdrawing transmission owner's zone. Therefore, the MISO Parties assert that the Commission should grant rehearing to authorize MISO to recover Legacy MTEP Project costs allocated to the ATSI zone.⁶⁰

B. ATSI's Answer to the MISO Parties' Motion for Clarification

32. ATSI argues that the MISO Parties' request for clarification is a request for the Commission to make a ruling that is contrary to the MISO Tariff and inconsistent with precedent. According to ATSI, the MISO Parties request the Commission to clarify an issue that was not addressed in the MISO Order. ATSI asserts that the applicable provisions of the MISO Tariff to continue charges to ATSI zone transmission customers, without the Tariff revisions proposed in Schedule 37 to the MISO Tariff and revisions to Attachment GG of the MISO Tariff, govern the allocation of Legacy MTEP Project costs.⁶¹ ATSI argues that the MISO Tariff and Transmission Owners Agreement do not support the MISO Parties' claim that ATSI is responsible for MTEP costs allocated to transmission customers serving load in the ATSI zone because neither of the provisions cited by the MISO Parties creates any new financial obligation on a withdrawing transmission owner; rather, they only provide for existing financial obligations to be honored. ATSI asserts that, prior to their request for clarification and compliance filing, the MISO Parties agreed that the Legacy MTEP Project costs allocated to the ATSI zone were payable by transmission customers, not by ATSI.⁶² In this regard, ATSI argues that MISO never charged ATSI for the costs of MTEP Projects while ATSI was a member of MISO, and there is no provision of the MISO Tariff that authorizes it to have imposed such charges.⁶³

⁵⁹ 16 U.S.C. § 824e (2012).

⁶⁰ MISO Parties Request for Clarification of the MISO Order at 12-13.

⁶¹ ATSI Answer to MISO Parties Request for Clarification of the MISO Order at 6-7.

⁶² *Id.* at 14 (citing MISO Schedule 37 Filing at 2).

⁶³ *Id.* at 8.

33. Further, ATSI argues that the MISO Parties are incorrect in relying on precedent accepting Tariff language in Attachment FF of the MISO Tariff that provides that MISO is entitled to recover from a transmission owner the costs associated with all financial obligations that were allocated to the owner's zone prior to the owner's withdrawal.⁶⁴ According to ATSI, the Commission, in accepting this language, did not hold that a transmission owner can be required to pay for financial obligations of other entities that pay costs allocated to the transmission owner's zone; rather, the Commission determined that the cost allocations made under Attachment FF are rightfully included in the "all financial obligations" contemplated by the MISO Transmission Owners Agreement. ATSI asserts that the only financial obligations contemplated by the Transmission Owners Agreement are those incurred by a transmission owner prior to its withdrawal, which do not include financial obligations incurred by other entities.⁶⁵ ATSI also argues that the Exit Fee Agreement approved by the Commission does not include any costs for Legacy MTEP Projects,⁶⁶ and that because the Exit Fee Agreement is a rate schedule of MISO that establishes the only amount that MISO may charge for ATSI's withdrawal obligation, the requested clarification would violate the filed-rate doctrine.

1. Commission Determination

34. We will grant the MISO Parties' requested clarification in part.⁶⁷ In the MISO Order, the Commission found that ATSI failed to demonstrate that ATSI was entitled to recover its Legacy MTEP Project costs from its wholesale transmission customers, and that Legacy MTEP Project costs were instead the responsibility of ATSI as part of its withdrawal obligations.⁶⁸ We confirm that MISO is entitled to recover the Legacy MTEP Project costs allocated to the ATSI zone from ATSI. We disagree with ATSI's argument that the MISO Parties' request for clarification is asking that the Commission make a

⁶⁴ *Id.* at 11.

⁶⁵ *Id.* at 12.

⁶⁶ *Id.* at 15 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,255 (2011)).

⁶⁷ As discussed below in the MISO Applicants' compliance section of this order, we will direct the MISO Applicants to remove language allowing MISO to invoice PJM (as agent for ATSI) in Section III.C, and to remove references to PJM in Section III.D, as proposed in the MISO Compliance Filing because ATSI is directly responsible for the Legacy MTEP Project costs as part of its withdrawal obligations from MISO.

⁶⁸ MISO Order, 135 FERC ¶ 61,204 at P 13.

ruling that is inconsistent with precedent. Contrary to ATSI's argument, Legacy MTEP Project costs are a part of ATSI's corporate withdrawal obligation and do not rest with ATSI's transmission customers, in the absence of a showing by ATSI that the benefits to wholesale transmission customers exceed the costs of the realignment.⁶⁹

35. The MISO Transmission Owners' Agreement states: "[a]ll financial obligations incurred and payments applicable to time periods prior to the effective date of such withdrawal shall be honored by [MISO] and the withdrawing [o]wner."⁷⁰ The Commission's established interpretation of this provision is that the *withdrawing* transmission owner, not its wholesale transmission customers, is responsible for the Legacy MTEP Project cost allocations. In *Duquesne*, the Commission concluded that under the MISO Transmission Owners' Agreement, Duquesne, as the transmission owner was liable for paying for MISO transmission costs allocated during the period after Duquesne had signed the MISO Transmission Owners' Agreement as a precursor to its leaving PJM and joining MISO, a transfer it never completed. The Commission found Duquesne responsible for allocated transmission costs for the period after Duquesne signed the MISO Transmission Owner Agreement and MISO's Board accepted Duquesne's entry until it determined to return to PJM, even though Duquesne had not fully integrated into MISO, and Duquesne's wholesale customers were not yet customers of MISO receiving service from MISO.⁷¹

36. ATSI claims that it did not incur Legacy MTEP Project costs prior to the date of its withdrawal from MISO membership, because MISO billed these costs directly to the customer, making the customers responsible. We disagree. As discussed above, the Commission in *Duquesne* found the obligation to pay was an obligation by Duquesne, incurred under the MISO Transmission Owners' Agreement, and not Duquesne's customers who at the time were still receiving service from PJM and had never received a bill from MISO. In this case, the decision to change RTOs was made by ATSI, the transmission owner, and not by its customers. MISO's billing mechanics when ATSI was a member of MISO (i.e., whether MISO billed ATSI which then billed its customers or MISO directly bills the customers) does not affect the underlying reality that ATSI's

⁶⁹ MVP Order, 133 FERC ¶ 61,221 at P 471; MVP Rehearing Order, 137 FERC ¶ 61,074 at P 322.

⁷⁰ MISO Transmission Owners Agreement, Art. V, § II.B.

⁷¹ *Duquesne Light Co.*, 138 FERC ¶ 61,111, at PP 37-38 (2012) (*Duquesne*) (stating that the MISO Transmission Owners Agreement "includes the obligation to pay a share of costs recovered under Schedules 10, 16, and 17, as well as costs associated with regional cost allocation provided under Attachment FF of MISO's tariff.").

business decision, including its decision to leave MISO, established responsibility for these exit costs with no ability for ATSI's customers to influence that obligation. These circumstances reinforce the importance of the Commission's established precedent.⁷²

37. Indeed, ATSI, in earlier filings, recognized that the Legacy MTEP Project costs were allocated to it as a transmission owner, in conjunction with costs borne by its customers. In its complaint requesting that the Commission exempt it and its customers from legacy PJM transmission expansion costs upon its integration into PJM, FirstEnergy stated that "a departing [MISO] transmission owner such as ATSI continues to bear the costs of projects planned and approved for load while its footprint was in the [MISO,]"⁷³ and that the MISO Tariff provides that MTEP "costs follow a departing member out of the RTO."⁷⁴

38. In the December 17, 2009 Order addressing ATSI's request to change RTOs, the Commission found, consistent with *Duquesne*, that under the MISO Transmission Owners Agreement, ATSI, as the transmission owner, bore responsibility for both sets of costs resulting from its own business decision: "ATSI's voluntary choice to move from one RTO to another does not cause the PJM or the MISO cost allocation methodologies to no longer be just and reasonable or [to be] unduly discriminatory simply because each produces a different result."⁷⁵ The Commission further stated:

We see no basis to modify the existing RTO rules simply because a particular cost allocation makes a transmission owner's business decision more expensive. Nor can we find on an *a priori* basis that, as ATSI argues, allocating system-wide costs to those leaving an RTO is necessarily preferable to charging such costs upon entry or that any particular cost allocation will create more stable RTOs. As

⁷² *Id.*

⁷³ Complaint of FirstEnergy Service Company Against PJM Interconnection, L.L.C., Docket No. EL10-6-000, at 1-2 (Oct. 19, 2009).

⁷⁴ *Id.* at 10 (citing MISO, FERC Electric Tariff, Attachment FF, § III.A.2.c.ii; § III.2.i).

⁷⁵ December 17, 2009 Order, 129 FERC ¶ 61,249 at PP 112-113, *aff'd*, *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 354 (D.C. Cir. 2014) ("ATSI's voluntary choice to move from one RTO to another does not render [either methodology] unjust or unreasonable ... simply because each methodology produces a different result. We are satisfied that this is a reasonable basis on which to reject the section 206 complaint.").

this case demonstrates, the exit costs imposed on ATSI under the [MISO Transmission Owners] Agreement did not create a disincentive for ATSI to leave the [MISO].⁷⁶

39. The Commission specifically addressed the allocation of MISO exit costs as between transmission owners and customers:

*the imposition of MISO exit fees on ATSI is a function of its obligation under the MISO transmission owner's agreement, not a finding that these costs necessarily benefit ATSI's wholesale customers. Unless ATSI can demonstrate that the benefits of RTO realignment for its wholesale transmission customers, outweigh any claimed integration costs, including MISO transmission project costs, its customers will not be required to pay the MISO exit fees.*⁷⁷

40. ATSI cites no MISO tariff provision holding customers responsible for paying Legacy MTEP Project costs as an exit obligation. When ATSI made such a filing in its June 30, 2011 Compliance Report, the Commission rejected it for the very reason that these were not costs that can be imposed on ATSI's customers absent a showing these costs are just and reasonable.⁷⁸

41. Lastly, we find that the ATSI-MISO Exit Fee Agreement does not absolve ATSI of Legacy MTEP Project cost responsibility under Article Five, Section II.B of the Transmission Owners Agreement. Section 3.1(a) of the ATSI-MISO Exit Fee Agreement, provides:

On the Withdrawal Date, [MISO] shall deliver to ATSI a written statement setting forth a good faith estimate of the exit fee. . . calculated in accordance with a methodology accepted by the Commission The parties acknowledge and agree that the Exit Fee Methodology attached hereto as Attachment A is complete and satisfies Article Five, Section II.B of the [MISO Transmission Owners] Agreement. The

⁷⁶ *Id.* P 113.

⁷⁷ *American Transmission System, Inc.*, 140 FERC ¶ 61,226, at P 34 (2012) (emphasis added).

⁷⁸ We affirm that determination below. *See infra* P 101.

[e]xit [f]ee will allocate specific amounts relating to . . . Schedules 10, 16, and 17 [of the Tariff].

Section 3.2 of the ATSI-MISO Exit Fee Agreement, provides:

In satisfaction of the requirements under Article Five, Section II.B of the [MISO Transmission Owners] Agreement, ATSI shall pay to [MISO] the Exit Fee and the True Up Fee in accordance with Section 3.1. Payment of the fees called for in Section 3.1 shall satisfy ATSI's financial obligations to [MISO] under Article Five, Section II.B of the [MISO Transmission Owners] Agreement.

Section 2.2 of the ATSI-MISO Exit Fee Agreement, provides:

Notwithstanding anything to the contrary in this Section 2.2, a Party's participation as to any matter at issue in [any] proceeding before the Commission regarding matters covered in Article Five, Section II of the [MISO Transmission Owners] Agreement, will not constitute a violation of this Section 2.2. The Parties acknowledge that ATSI disputes the scope of ATSI's obligations under Article Five, Section II of the [MISO Transmission Owners] Agreement. By signing this Agreement, ATSI does not waive and expressly reserves the right to participate as to all matters at issue in [proceedings regarding matters covered in Article Five, Section II of the MISO Transmission Owners Agreement], to pursue complaints, rehearings and appeals of any Commission orders related thereto and to pursue other legal remedies regarding matters covered in Article Five, Section II of the [MISO Transmission Owners] Agreement.

42. We disagree with ATSI and find that the language in the ATSI-MISO Exit Fee Agreement addresses only the requirements of Article Five, Section II.B of the MISO Transmission Owners Agreement for the calculation of financial obligations under Tariff Schedules 10, 16 and 17. These schedules do not address Legacy MTEP Project costs. We find that, although Section 3.1(a) of the ATSI-MISO Exit Fee Agreement states that Attachment A satisfies Article Five, Section II.B, Section 3.1(a) also expressly states that Attachment A specifies the applicable exit fee "methodology," not any complete satisfaction of the underlying financial obligations themselves. Moreover, Section 3.1(a) of the ATSI-MISO Exit Fee Agreement specifies that the exit fee "will allocate specific amounts relating to [MISO] Tariff Schedules 10, 16, and 17." We find that Section 3.1(a)'s plain meaning is that the exit fee referenced only covers ATSI's Article Five, Section II.B financial obligations under Tariff Schedules 10, 16 and 17. We also

conclude that the broader “satisfaction” provision of Section 3.2 is limited to Section 3.1(a), which satisfies only ATSI’s MISO Tariff Schedule 10, 16 and 17 financial obligations.

43. In addition, we interpret Section 2.2 of the ATSI-MISO Exit Fee Agreement as confirming that the “satisfaction” of ATSI’s financial obligations is limited to ATSI’s obligations under Schedules 10, 16 and 17. We find that there would have been no reason for ATSI to preserve its rights to participate in other pending or future Commission proceedings involving Article Five, Section II.B obligations that ATSI was resolving comprehensively in the very same agreement unless the obligations addressed in the other proceedings were not extinguished by the ATSI-MISO Exit Fee Agreement.

44. We find that the statement in the preamble of the ATSI-MISO Exit Fee Agreement states only the general objective to “memorialize the terms and conditions of ATSI’s satisfaction of its exit fee obligations under Article Five, Section II.B of the [MISO Transmission Owners Agreement],” and that the extent of those obligations are specified in the operative terms of the agreement. We also find it reasonable to conclude that the operative sections of the ATSI-MISO Exit Fee Agreement, Sections 3.1(a), 3.2, and 2.2, indicate the intent to satisfy limited financial obligations, and that this intent is not outweighed by any general language in the preamble.

V. Compliance Filings

A. PJM Integration

1. ATSI June 30, 2011 Compliance Filing, Docket Nos. ER11-2814-001 and ER11-2815-002 and December 13, 2014 Compliance Errata, Docket No. ER11-2815-004

a. ATSI June 30, 2011 Compliance Filing

45. On June 30, 2011, PJM submitted the ATSI June 30, 2011 Compliance Filing to address the Commission’s conditions in the PJM Order.⁷⁹ ATSI states that as directed by the Commission in the PJM Order, it has revised its formula rate set forth in

⁷⁹ Pursuant to Order No. 714, filings are submitted by PJM on behalf of ATSI as part of an XML filing package that conforms with the Commission’s regulations. PJM states they have agreed to make all filings on behalf of the PJM Transmission Owners in order to retain administrative control over the PJM Tariff. Thus, ATSI has requested PJM to submit Tariff revisions in the eTariff system as part of PJM’s electronic Intra PJM Tariff.

Attachment H-21 of the PJM Tariff to remove the PJM integration costs, the deferred internal integration costs, MISO Exit Fee and Legacy MTEP Project costs from its transmission rates.⁸⁰ ATSI also explains that, in order to comply with the Commission's condition in the PJM Order to remove Legacy MTEP Project costs from its rates, ATSI has revised Attachment II of the PJM Tariff to remove provisions under which ATSI zone transmission customers are charged for Legacy MTEP Project costs. ATSI states that it also has removed provisions under which the MISO Transmission Owners would calculate the Legacy MTEP Project revenue requirements, and has removed the method of allocating the revenue requirements to ATSI zone transmission customers. Further, ATSI states that it has removed the provisions under which PJM would remit to MISO the amounts received from ATSI zone transmission customers for Legacy MTEP Project costs. Finally, ATSI states that it removed from Attachment II the list of Legacy MTEP Projects being built by the MISO Transmission Owners.⁸¹

b. ATSI December 13, 2011 Compliance Errata

46. On December 13, 2011, PJM submitted, on behalf of ATSI, the ATSI December 13, 2011 Compliance Filing Errata to the ATSI June 30, 2011 Compliance Filing. ATSI states that this filing simply corrects the mapping errors for PJM Tariff Attachment H-21 and Tariff Attachment H-21A. According to ATSI, only the Tariff records in RTF form with corrected metadata are being resubmitted with this filing. ATSI asserts that the attachments showing clean and marked Tariff language for these Tariff sections are not being resubmitted because they have only been remapped to the correct location in the PJM Tariff e-Tariff database and there are no substantive changes. ATSI states that these revisions represent technical corrections related to the placement of a section only, moving the Attachment H-21-A compliance language to its correct location and restoring Attachment H-21 to its proper original state so as to correct the error described above, and do not have any textual or substantive revisions. ATSI requests an effective date of June 1, 2011, for the revised PJM Tariff section in accordance with the PJM Order.

c. Notice of Filings and Responsive Pleadings

47. Notice of the ATSI June 30, 2011 Compliance Filing was published in the *Federal Register*, 76 Fed. Reg. 41,785 (2011), with interventions and protests due on or before July 25, 2011. MISO filed a motion to intervene and protest. MISO and the MISO Transmission Owners (MISO Parties) filed a protest. American Municipal Power,

⁸⁰ ATSI June 30, 2011 Filing at 4.

⁸¹ *Id.* at 5.

Inc. (AMP) filed comments and a conditional protest. On August 5, 2011, ATSI filed an answer.

48. Notice of the ATSI December 13, 2011 Compliance Filing Errata was published in the *Federal Register*, 76 Fed. Reg. 80,356 (2011), with interventions and protests due on or before January 3, 2012. None were filed.

d. Procedural Matters

49. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept the ATSI answer because it has provided information that assisted us in our decision-making process.

e. Protests & Answers

i. Protests

50. The MISO Parties argue that the ATSI June 30, 2011 Compliance Filing significantly exceeds the limited conditions of the PJM Order to remove certain costs from ATSI's formula rates, and therefore should be rejected. The MISO Parties argue that the ATSI June 30, 2011 Compliance Filing also violates the December 17, 2009 Order by removing language from the PJM Tariff that was adopted to fulfill ATSI's obligations to MISO upon its withdrawal.⁸²

51. The MISO Parties state that the Commission determined that ATSI failed to demonstrate that it was just and reasonable for ATSI to pass-through to its transmission customers costs that ATSI is obligated to pay upon withdrawal from MISO. The MISO Parties argue that to satisfy the Commission order to remove from its formula rates ATSI's RTO realignment costs, ATSI needed only to revise the rate formula set forth in Attachment H-21 and remove any references to RTO realignment costs from Schedules 1A, 7, and 8.

52. The MISO Parties argue that rather than limiting its revisions to the conditions of the PJM Order (i.e., to remove RTO realignment costs from ATSI's formula rates), ATSI proposed a host of additional changes that are not required to comply with the PJM Order. Specifically, the MISO Parties explain that ATSI proposed several revisions to Attachment II, which governs the collection and distribution of revenues associated with Legacy MTEP Projects built by ATSI and by the MISO Transmission Owners, including:

⁸² MISO Parties Protest to the ATSI June 30, 2011 Compliance Filing at 5.

(1) removing definitions related to Legacy MTEP Projects built by MISO Transmission Owners; (2) deleting provisions summarizing the manner through which PJM will collect revenues (as agent for ATSI) for MTEP projects for which ATSI is responsible and transmit those revenues to MISO for distribution to the MISO Transmission Owners; (3) striking language reflecting the methodology that the MISO Transmission Owners will use to calculate revenue requirements for Legacy MTEP Projects for which ATSI is financially responsible; and (4) deleting the list of Legacy MTEP Projects constructed or to be constructed by the MISO Transmission Owners for which ATSI is financially responsible.⁸³ The MISO Parties contend that nowhere in the PJM Order did the Commission direct ATSI to remove from the PJM Tariff provisions governing the ongoing relationship among ATSI, PJM, and MISO regarding ATSI's continuing obligations to construct and pay for Legacy MTEP Projects.

53. The MISO Parties argue that the ATSI June 30, 2011 Compliance Filing contravenes the limited mandate of the PJM Order, and violates the Commission's order authorizing ATSI to withdraw from MISO and integrate into PJM.⁸⁴ The MISO Parties contend that the Commission repeatedly has determined that the contractual obligations of a transmission owner seeking to withdraw from MISO include both financial obligations as required by Article V, Section II.B of the MISO Transmission Owners Agreement and remaining obligations related to the construction of new facilities as required by Article V, Section II.C of the MISO Transmission Owners Agreement.⁸⁵ The MISO Parties contend that Commission precedent also defines the financial obligations of a withdrawing MISO Transmission Owner to include, among other things, MTEP Project costs allocated to the transmission owner's zone under Attachment FF of the MISO Tariff prior to its withdrawal.⁸⁶ The MISO Parties argue that the ATSI

⁸³ *Id.* at 7-8.

⁸⁴ *Id.* at 9.

⁸⁵ MISO Parties Protest to the ATSI June 30, 2011 Compliance Filing at 9-10 (citing PJM Order, 135 FERC ¶ 61,198 at P 48; *see also Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc.*, 133 FERC ¶ 61,058 at PP 73, 76 (2010); *Louisville Gas and Electric Co.*, 114 FERC ¶ 61,282, at PP 57-61, *order on reh'g*, 116 FERC ¶ 61,020 (2006)).

⁸⁶ *Id.* at 10 (citing RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83 ("The Commission has determined that the [MTEP] cost allocations made under Attachment FF [of the Midwest ISO Tariff] are rightfully included in the 'all financial obligations' contemplated by the [Midwest ISO Owners] Agreement."); *see also MVP Order*, 133 FERC ¶ 61,221 at P 471 ("As we read the proposal, a transmission owner that

(continued ...)

June 30, 2011 Compliance Filing violates the PJM Order by eliminating the provisions that establish the manner through which ATSI will satisfy its obligations to MISO upon its withdrawal.⁸⁷

54. Finally, the MISO Parties argue that the ATSI June 30, 2011 Compliance Filing retains Attachment II language providing for payment by MISO for Legacy MTEP Projects built by ATSI while eliminating payments by ATSI to the MISO Transmission Owners. The MISO Parties contend that ATSI's self-serving revisions to Attachment II would entitle ATSI to recover Legacy MTEP Project costs allocated to MISO transmission customers without any reciprocal recovery by MISO of Legacy MTEP Project costs allocated to the ATSI zone, an unjust and unreasonable outcome.⁸⁸ The MISO Parties state that MISO fully supports the MISO Transmission Owners.

55. AMP submits comments for the limited purpose of ensuring that settlement charges it may pay to MISO or MISO entities for Long-Term Firm Transmission Rights infeasibility are excluded from ATSI's formula transmission rate by the ATSI June 30, 2011 Compliance Filing.⁸⁹ AMP argues that any such costs are directly attributable to ATSI's withdrawal from MISO, and for that reason, pursuant to the PJM Order, such costs are not recoverable from ATSI's transmission customers. Accordingly, AMP argues that ATSI's compliance formula rate should not provide for the recovery of those costs. AMP states that to avoid any possibility of controversy, however, ATSI should confirm that any charges it might pay to MISO (or to other MISO entities) for Long-Term Firm Transmission Rights infeasibility indeed are excluded from ATSI's formula rate by the Tariff revisions submitted with the ATSI June 30 2011 Compliance Filing. AMP asserts that if ATSI provides that confirmation, there is no need for AMP to protest the Compliance Filing.⁹⁰

withdraws from Midwest ISO would remain responsible for all financial obligations incurred with respect to the Multi Value Project Tariff provisions while a member of [MISO.]"); RECB I Order, 118 FERC ¶ 61,209 at P 193 (directing MISO to revise its Tariff to clarify that an owner that withdraws from MISO is not "absolved" from paying for transmission upgrades)).

⁸⁷ *Id.* at 9-10.

⁸⁸ *Id.* at 11.

⁸⁹ AMP Comments to the ATSI June 30, 2011 Compliance Filing at 2-3.

⁹⁰ *Id.* at 3.

ii. Answer

56. According to ATSI, AMP requests that ATSI confirm that any settlement charges it may pay to MISO or MISO entities for Long-Term Firm Transmission Rights infeasibility are excluded from ATSI's formula rate and states that if ATSI so confirms, AMP does not protest the Compliance Filing. ATSI states that, although settlement charges it may pay to the MISO or MISO entities for Long-Term Firm Transmission Rights infeasibility are beyond the scope of this proceeding, ATSI confirms that there are no Long-Term Firm Transmission Rights settlement costs included in the accounting information used to populate ATSI's formula rate to derive transmission charges.⁹¹

57. ATSI argues that the ATSI June 30, 2011 Compliance Filing does not exceed the conditions of the PJM Order. ATSI contends that the provisions that the MISO Parties claim ATSI should have retained were integral to ATSI's recovery of Legacy MTEP Project costs from transmission customers in the ATSI zone through its formula rate; they prescribe the formula rate for calculating the Legacy MTEP Project costs to be recovered from transmission customers serving load in the ATSI zone and specify how PJM would disburse the resulting revenues.⁹² ATSI asserts that these provisions therefore are part of the formula rate from which the Commission directed ATSI to remove Legacy MTEP Project costs.⁹³ ATSI contends that they are part and parcel of the mechanism through which ATSI proposed to recover Legacy MTEP Project costs from ATSI zone transmission customers and that their removal is directly responsive to the Commission's condition in the PJM Order prohibiting such recovery absent a further showing.

58. ATSI contends that if Legacy MTEP Project costs are not charged to those customers, there is no reason to specify how to calculate the Legacy MTEP Project revenue requirement and the portion of that revenue requirement to be billed to ATSI zone transmission customers or how the resulting revenues will be disbursed. ATSI argues that the ATSI June 30, 2011 Compliance Filing thus made the changes that the Commission required in the PJM Order, i.e., the removal of provisions of the formula rate that were used to recover a share of the costs of Legacy MTEP Projects costs from ATSI zone transmission customers, and no additional changes were made beyond those required by the Commission. ATSI asserts that the MISO Parties' contention that ATSI

⁹¹ ATSI Answer to Comments/Protests to the ATSI June 30, 2011 Compliance Filing at 13-14.

⁹² *Id.* at 5.

⁹³ *Id.* (citing PJM Order, 135 FERC ¶ 61,198 at P 60).

should have left some of those provisions intact is unsupported and should be disregarded.⁹⁴

59. According to ATSI, the MISO Parties also assert that the ATSI June 30, 2011 Compliance Filing violates what it describes as ATSI's obligation to pay MISO for Legacy MTEP Project costs as part of the exit fee due upon its withdrawal from MISO, which they claim was recognized in Commission precedent. ATSI argues that the ATSI June 30, 2011 Compliance Filing is consistent with its obligation to MISO.⁹⁵ ATSI argues that it has no obligation to pay for Legacy MTEP Project costs as part of its withdrawal fee, because it had no obligation to pay MTEP Project costs before its withdrawal from MISO. ATSI states that no provision of the MISO Tariff or the MISO Transmission Owners Agreement establishes such an obligation. ATSI states that the MISO Parties cite no provision of the MISO Tariff that imposed on ATSI an obligation to pay MTEP Project costs while ATSI was a member of MISO and, according to ATSI, there is none. ATSI argues that the MISO Tariff imposes the obligation to pay for MTEP Projects on transmission customers that use its transmission system, not on transmission owners, as such.⁹⁶

60. ATSI argues that the MISO Parties claim that Commission precedent obligates ATSI to pay for Legacy MTEP Project costs, even though neither the MISO Tariff nor the MISO Transmission Owners Agreement creates such an obligation, is also wrong. According to ATSI, the Commission decisions that the MISO Parties cite hold that transmission upgrade costs may form part of a withdrawing transmission owner's financial obligations, but *only* if those costs were previously allocated to the transmission owner. ATSI contends that they neither hold that a transmission owner's financial obligations for upgrade costs increase upon its withdrawal nor impose obligations that go beyond those in the MISO Tariff and MISO Transmission Owners Agreement.⁹⁷

61. ATSI argues that the Commission should ensure consistent treatment of MTEP Project costs by accepting the confirmation of MTEP recovery from ATSI zone transmission customers.⁹⁸ ATSI asserts that the MISO Parties point out that ATSI's

⁹⁴ *Id.* at 5-6.

⁹⁵ *Id.* at 7 (citing MISO Parties Protest to the ATSI June 30, 2011 Compliance Filing at 10-11).

⁹⁶ *Id.* at 7-8.

⁹⁷ *Id.* at 10-11.

⁹⁸ *Id.* at 12.

revisions entitle it to recover a share of ATSI's MTEP Project costs from MISO transmission customers without any reciprocal recovery of MTEP costs allocated to the transmission customers in the ATSI zone, and that this is argued by ATSI on rehearing. According to ATSI, the PJM Order did not require any changes to the provisions of the PJM Filing that implemented the continued payment by transmission customers in the remaining MISO zones of a portion of ATSI's costs of constructing MTEP Projects and the crediting of the associated revenues to ATSI's transmission revenue requirement. ATSI argues that the Commission's treatment of MTEP Project costs was inconsistent and therefore arbitrary and capricious, and that the correct solution is for the Commission to permit PJM to continue to recover these costs from transmission customers in the ATSI zone through application of the ATSI formula rate in Attachment H-21 and Attachment II and pass those amounts onto the MISO for distribution to the MISO Transmission Owners.⁹⁹

f. Commission Determination

62. The Commission will accept the ATSI June 30, 2011 Compliance Filing. We find that ATSI followed the Commission's condition by revising its formula rate set forth in Attachment H-21 of the PJM Tariff to remove the PJM Integration Costs, the ATSI Internal Integration Costs, the MISO Exit Fees, and the Legacy MTEP Project costs from its transmission rates. The Commission will also accept the December 13, 2011 Compliance Errata.

63. ATSI also explains that, in order to comply with the Commission's condition in the PJM Order to remove Legacy MTEP Project costs from its rates, ATSI has revised Attachment II of the PJM Tariff to remove provisions under which ATSI zone transmission customers are charged for Legacy MTEP Project costs, removed provisions under which the MISO Transmission Owners would calculate the Legacy MTEP Project cost revenue requirements, and removed the method of allocating the revenue requirements to ATSI zone transmission customers. Further, ATSI states that it has removed the provisions under which PJM would remit to MISO the amounts received from ATSI zone transmission customers for Legacy MTEP Project costs. The MISO Parties contend that nowhere in the PJM Order did the Commission direct ATSI to remove from the PJM Tariff provisions governing the ongoing relationship among ATSI, PJM, and MISO regarding ATSI's continuing obligations to construct and pay for Legacy MTEP Projects, and that the filing violates the December 17, 2009 Order by eliminating the provisions that establish the manner through which ATSI will satisfy its obligations to MISO upon its withdrawal. As discussed above, the Commission did not find that ATSI is relieved of its continuing obligations to pay for Legacy MTEP Projects. Rather, the

⁹⁹ *Id.* at 12-13.

Commission found that ATSI could not recover these costs from its wholesale transmission customers without specifically identifying the benefits of the RTO realignment decision with respect to its wholesale transmission customers and including a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment. ATSI is still responsible for payment of Legacy MTEP Project costs and the remittance of these costs under the terms of Schedule 37 and Attachment GG of the MISO Tariff, as discussed below.

64. The MISO Parties also argue that the ATSI June 30, 2011 Compliance Filing retains Attachment II language providing for payment by MISO for Legacy MTEP Projects built by ATSI while eliminating payments by ATSI to MISO. The Commission finds that just as ATSI, as the transmission owner, is still responsible for the payment and remittance of its continuing obligations to pay for Legacy MTEP Projects, MISO is still responsible for the payment and remittance of MTEP Projects built by ATSI as allowed under Attachment II.

65. AMP requests that ATSI confirm that any settlement charges it may pay to MISO or MISO entities for Long-Term Firm Transmission Rights infeasibility are excluded from ATSI's formula rate and states that if confirmed, AMP does not protest the ATSI June 30, 2011 Compliance Filing. ATSI confirms that there are no Long-Term Firm Transmission Rights settlement costs included in the accounting information used to populate ATSI's formula rate to derive transmission charges. Therefore, AMP's protest is now moot.

2. **PJM June 13, 2011 Compliance Filing, Docket No. ER11-2815-001**

a. **PJM June 13, 2011 Compliance Filing**

66. In the PJM Order, the Commission accepted and suspended ATSI's formula rate effective June 1, 2011. The Commission also accepted PJM's proposed revisions to the PJM Tariff and other agreements in connection with ATSI's integration into PJM, effective June 1, 2011, subject to PJM's correction of two typographical errors. On June 13, 2011, PJM submitted a Compliance Filing to correct these two typographical errors in Attachment J of the PJM Tariff. PJM states that its proposal amends Attachment J to the PJM Tariff by identifying "Jersey Central Power and Light Company" with the correct short name of "JCPL." PJM also states that it adds the full name of "Public Service Electric and Gas Company" which, due to a typographical error, was missing from the revisions to Attachment J submitted in Docket No. ER11-2815-000. PJM requests an effective date of June 1, 2011.

b. Notice of Filing and Responsive Pleadings

67. Notice of the PJM June 13, 2011 Compliance Filing was published in the *Federal Register*, 76 Fed. Reg. 35,876 (2011), with interventions and protests due on or before July 5, 2011. None were filed.

c. Commission Determination

68. We will accept the PJM June 13, 2011 Compliance Filing, effective June 1, 2011, as requested.

B. MISO Exit Obligations**1. MISO Parties' Compliance Filing, Docket No. ER11-3279-001**

69. On June 30, 2011, the MISO Parties submitted the MISO Parties June 30, 2011 Compliance Filing to revise Schedule 37 and Attachment GG of the MISO Tariff in response to the Commission's condition in the MISO Order to remove or modify tariff language suggesting that ATSI's wholesale transmission customers bear responsibility for any remaining financial obligation for Legacy MTEP Projects. The MISO Parties propose to modify Schedule 37 and Attachment GG to remove all language suggesting that ATSI's wholesale transmission customers will be charged for MTEP costs under Schedule 37.¹⁰⁰ The MISO Parties also state that they are revising new Section 2(h)(v) of Attachment GG to address drive-through and drive-out point-to-point revenue sharing, consistent with the Commission's condition in the MISO Order.¹⁰¹

2. ATSI June 30, 2011 Compliance Report, Docket No. ER11-3279-001

70. The ATSI June 30, 2011 Compliance Report was filed in response to the Commission's condition in the MISO Order.¹⁰² ATSI states that MISO refused to file on behalf of ATSI and, therefore, it "is alone in submitting this compliance report, because the MISO Parties informed ATSI that they do not agree with ATSI's proposed Tariff revisions to eliminate those provisions that recover Legacy MTEP Project costs from

¹⁰⁰ MISO Parties June 30, 2011 Compliance Filing at 4.

¹⁰¹ *Id.* at 5 (citing MISO Order, 135 FERC ¶ 61,204 at P 14).

¹⁰² ATSI June 30, 2011 Compliance Report at 2. As discussed above, ATSI also submitted a request for rehearing of the MISO Order.

ATSI zone transmission customers.”¹⁰³ ATSI states that its submittal of the ATSI June 30, 2011 Compliance Report is without prejudice to its right also to file a motion for clarification or request for rehearing of the MISO Order and comments or a protest with respect to the compliance filing submitted by the MISO Parties.¹⁰⁴

71. ATSI states that, as directed by the Commission in the MISO Order, ATSI is revising Schedule 37 and Attachment GG to remove all provisions that implement the recovery of Legacy MTEP Project costs from ATSI’s wholesale transmission customers or suggest that those customers bear responsibility for any remaining financial obligations for Legacy MTEP Projects costs. ATSI states that the MISO Tariff revisions proposed in the MISO Realignment Filing, modified to reflect these changes, are included in the ATSI June 30, 2011 Compliance Report. ATSI states that it would revise Section (2)(h)(v) of Attachment GG to add the phrase “drive-through and drive-out” to the section, as directed by the Commission.¹⁰⁵

3. Notice and Responsive Pleadings

72. Notice of the MISO Parties June 30, 2011 Compliance Filing was published in the *Federal Register*, 76 Fed. Reg. 41,787 (2011), with interventions or protests due on or before July 21, 2011. ATSI submitted a protest to the MISO Parties June 30, 2011 Compliance Filing. The MISO Parties submitted an answer to ATSI’s protest.

73. The MISO Parties submitted a motion to reject the ATSI June 30, 2011 Compliance Report. ATSI submitted an answer in response.

a. ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing

74. ATSI protests the MISO Parties June 30, 2011 Compliance Filing, arguing that the MISO Parties’ filing proposes changes to the MISO Tariff modifications initially filed in this proceeding that go beyond those directed in the MISO Order, and thereby exceed the permissible scope of a compliance filing. According to ATSI, the Commission did not order the additional change that the MISO Parties propose; specifically, it did not direct or authorize the MISO Applicants to revise Schedule 37 or Attachment GG to shift

¹⁰³ *Id.* at 2.

¹⁰⁴ *Id.* at 4.

¹⁰⁵ *Id.* at 3 (citing MISO Order, 135 FERC ¶ 61,204 at P 14).

Legacy MTEP Project costs from ATSI's wholesale transmission customers to ATSI.¹⁰⁶ ATSI argues that the Commission has repeatedly held that a compliance filing must be limited in scope to fulfilling the conditions contained in the underlying order, and cannot address matters beyond those conditions,¹⁰⁷ and the only purpose of a compliance filing is "to make the directed revisions."¹⁰⁸ ATSI argues that these principles have long underpinned the compliance review process, and are both recognized and required by the federal courts.¹⁰⁹ ATSI further argues that the Commission expressly prohibits jurisdictional entities from filing provisions that exceed its orders, which include provisions that would initiate new services or rates.¹¹⁰ ATSI contends that by proposing to revise Schedule 37 and Attachment GG to shift to ATSI cost obligations that the MISO Tariff places on transmission customers, the MISO Parties June 30, 2011 Compliance Filing violates this restriction. ATSI asserts that when the Commission evaluates a compliance filing it restricts its review to whether the changes comply with those conditions it has ordered,¹¹¹ and in this case, the Commission must conclude that the MISO Parties exceeded the condition in the MISO Order.

75. According to ATSI, the MISO Parties June 30, 2011 Compliance Filing also fails to satisfy the requirements for a FPA section 205 filing. Specifically, ATSI asserts that the MISO Parties concede that their attempt to impose Legacy MTEP Project costs on ATSI exceeds the proper scope of a compliance filing because they ask the Commission to treat their filing as just and reasonable under section 205 of the FPA if it finds the

¹⁰⁶ ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing at 6 (citing MISO Order, 135 FERC ¶ 61,204 at P 13).

¹⁰⁷ *Id.* at 7 (citing *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079, at P 60 (2005)).

¹⁰⁸ *Id.* (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 99 FERC ¶ 61,302, at 62,264 (2002)).

¹⁰⁹ *Id.* (citing *Delmarva Power & Light Co.*, 63 FERC ¶ 61,321, at 63,160 (1993); *East Texas Electric Cooperative, Inc. v. FERC*, 218 F.3d 750 (D.C. Cir. 2000)).

¹¹⁰ *Id.* (citing *Pacific Gas & Electric Co.*, 109 FERC ¶ 61,336, at P 5 (2004); *Midwest Independent Transmission Sys. Operator, Inc.*, 99 FERC ¶ 61,302, at 62,266; *Southwest Power Pool, Inc.*, 129 FERC ¶ 61,145, at P 8 (2009)).

¹¹¹ *Id.* (citing *California Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,339, at P 37 (2008)).

filing proposes changes not required by the MISO Order.¹¹² ATSI argues that the MISO Parties offer only a single sentence in a footnote in which they assert that charging Legacy MTEP Project costs to ATSI is “consistent with Commission precedent” and cite a single decision in support.¹¹³

76. ATSI also argues that the MISO Parties have not fulfilled the requirements of section 35.13 of the Commission’s regulations, including the requirement to show the impact of the proposed rate increase on ATSI.¹¹⁴ ATSI argues that the MISO Parties misrepresent the impact of their proposal on ATSI, claiming that their proposed revisions to the Tariff do not involve any increase in rates.¹¹⁵ According to ATSI, the MISO Parties propose to charge millions of dollars of MTEP Project costs to ATSI, which previously paid and currently pays none of these costs. ATSI argues that this cannot be characterized as anything other than a rate increase. ATSI claims that the MISO Parties have not shown that the costs of Legacy MTEP Projects that they seek through their filing to allocate to ATSI are “at least roughly commensurate” with the benefits that ATSI is projected to derive from those transmission upgrades, as the FPA requires.¹¹⁶ Further, ATSI argues that neither the precedent cited by the MISO Parties nor the provisions of the MISO Tariff or the MISO Transmission Owners’ Agreement permit the MISO Parties’ attempt to charge MTEP Project costs to ATSI, which as a transmission owner was not obligated to pay such costs when it was a member of MISO because it was not a transmission customer. Thus, ATSI concludes that the sole justification the MISO Parties offer for the MISO Parties June 30, 2011 Compliance Filing is unfounded.

77. ATSI also argues that the MISO Parties June 30, 2011 Compliance Filing does not demonstrate that ATSI is obligated to pay Legacy MTEP Project costs. According to ATSI, the MISO Tariff and MISO Transmission Owners’ Agreement do not support the MISO Parties’ claim that ATSI is responsible for MTEP costs allocated to transmission customers serving load in the ATSI zone. Specifically, ATSI argues that both

¹¹² ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing at 8 (citing MISO Parties’ Compliance Filing at n.1).

¹¹³ *Id.* (citing MISO Parties’ Compliance Filing at n.1 (citing RECB II Rehearing Order, 120 FERC ¶ 61,080).

¹¹⁴ *Id.* at 9 (citing 18 C.F.R. § 35.13(b) and (c)).

¹¹⁵ *Id.* (citing MISO Parties June 30, 2011 Compliance Filing at 6, n.27).

¹¹⁶ *Id.* (citing *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009)).

Section III.A.2.j of Attachment FF or the Tariff and Article Five, Section II.B of the MISO Transmission Owners' Agreement use language that preserves "any financial obligations [that a withdrawing transmission owner] incurred" prior to its withdrawal from MISO to pay a share of the costs of MTEP Projects. ATSI argues that neither of these provisions creates any new financial obligation on a withdrawing transmission owner; rather, the provisions only provide for existing financial obligations to continue to be honored.¹¹⁷ ATSI asserts that the MISO Tariff imposes the obligation to pay for MTEP Projects on transmission customers that use its transmission system, not transmission owners.¹¹⁸

78. Therefore, ATSI concludes that it could only have incurred a financial obligation to pay for Legacy MTEP Projects costs while ATSI was a member of MISO if it had been a MISO transmission customer prior to its withdrawal. However, ATSI points out that it was never a transmission customer under the Tariff, and no costs of any MTEP Project were ever allocated to ATSI under any provision of Attachment FF of the MISO Tariff prior to ATSI's withdrawal. Therefore, ATSI argues that, under the plain language of Attachment FF, Section II.A.2.j of the MISO Tariff and Article Five, Section II.B of the MISO Transmission Owners Agreement, a withdrawing transmission owner such as ATSI is not required to honor a financial obligation it did not have while it was a member of MISO.¹¹⁹ In this respect, ATSI argues that it stands in a different position than some other past and present MISO Transmission Owners, which are both transmission owners and transmission customers. ATSI asserts that the MISO Parties cannot ignore the MISO Tariff because MISO's charges must conform to its filed rates,¹²⁰ and "the plain language of the tariff governs the allocation of costs."¹²¹

79. ATSI states that the MISO Parties' own proposal does not authorize MISO to bill any Legacy MTEP Project costs to ATSI; for each Legacy MTEP Project the percentage for ATSI calculated in accordance with [Attachment FF's approved] cost allocation methodology is zero. ATSI asserts that this is more than a technical drafting error, and

¹¹⁷ *Id.* at 10-11.

¹¹⁸ *Id.* at 11-12 (citing MISO Tariff, Attachment FF, § III).

¹¹⁹ *Id.* at 12.

¹²⁰ *Id.* at 13 (citing *Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 581 (1981)).

¹²¹ *Id.* at 14 (quoting December 17, 2009 Order, 129 FERC ¶ 61,249 at P 113, n.75; citing *California ex rel. Lockyer v. Dynegy, Inc.*, 375 F.3d 831, 853 (9th Cir. 2004); *Ameren Servs. Co. v. FERC*, 330 F.3d 494, 498 (D.C. Cir. 2003)).

that it reflects a fundamental flaw in the MISO Parties' position: "their assumption that Legacy MTEP costs are a 'financial obligation' of ATSI hinges on their premise that the costs of Legacy MTEP Projects were allocated to ATSI while ATSI was a member of [MISO]." ¹²²

80. Further, ATSI asserts that Commission precedent refutes the MISO Parties' claim that they may charge ATSI for Legacy MTEP Project costs. ATSI argues that contrary to the MISO Parties' statement, ¹²³ the Commission did not hold that a transmission owner can be required to pay for financial obligations of other entities that pay costs allocated to the transmission owner's zone. ATSI argues that the Commission instead held that the only "financial obligations" contemplated by the MISO Transmission Owners Agreement are financial obligations incurred by a transmission owner prior to its withdrawal, ¹²⁴ and those obligations do not include financial obligations incurred by other entities, regardless of whether or not those entities incurred the obligations as transmission customers serving load in a transmission owner's zone.

81. ATSI argues that in its order on MISO's proposal to incorporate a cost allocation methodology for Regionally Beneficial Projects that was established through its Regional Expansion Criteria and Benefits Task Force the Commission stated "withdrawal does not absolve a transmission owner of its responsibility for the costs of upgrades *previously allocated to it.*" ¹²⁵ ATSI argues that the Commission did not authorize MISO to charge additional costs to a withdrawing transmission owner for MTEP Project costs that the transmission owner was not required to pay before it withdrew. Further, ATSI asserts that nothing in the Commission's order on MISO's Multi Value Projects holds or suggests that a withdrawing transmission owner becomes responsible for the financial obligations of any other entity. ¹²⁶

82. According to ATSI, the changes the MISO Parties propose in Schedule 37 and Attachment GG are prohibited by another ruling in the Commission's order addressing MISO's Multi Value Projects. ATSI argues that the Commission made it clear that the

¹²² *Id.* at 14-15.

¹²³ *Id.* at 15 (citing MISO Parties June 30, 2011 Compliance Filing at 1 n.1).

¹²⁴ *Id.* (citing RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

¹²⁵ *Id.* at 16 (quoting RECB I Order, 118 FERC ¶ 61,209 at P 193 (emphasis added by ATSI)).

¹²⁶ *Id.* at 16-17 (citing MVP Order, 133 FERC ¶ 61,221 at PP 470-471).

amount of the financial obligations of a withdrawing transmission owner, including any obligations for MTEP Projects, “would be determined at the time of the withdrawal.”¹²⁷ ATSI argues that its withdrawal obligation under the MISO Transmission Owners Agreement was determined at the time of its withdrawal and memorialized in the Exit Fee Agreement with MISO, which the Commission accepted. ATSI asserts that, in that agreement, the parties determined that ATSI’s withdrawal obligation included no Legacy MTEP Project costs. ATSI argues that even if there was a valid basis for the MISO Parties’ attempt to impose such an obligation through their proposed changes to Schedule 37 and Attachment GG, they did not propose those changes until June 30, 2011 and do not propose to make them effective until June 1, 2011, after ATSI’s withdrawal from MISO was complete.

83. According to ATSI, prior to the submission of the MISO Parties June 30, 2011 Compliance Filing and motion for clarification, the MISO Parties agreed that the Legacy MTEP Project costs allocated to the ATSI zone were payable by transmission customers, not by ATSI.¹²⁸ Further, ATSI argues that the Exit Fee Agreement between MISO and ATSI does not include any costs of Legacy MTEP Projects, and is based solely on ATSI’s proportionate share of the costs incurred by MISO and recognized as long-term liabilities on MISO’s balance sheet.¹²⁹ ATSI concludes that because the Exit Fee Agreement is a rate schedule of MISO that establishes the only amount MISO may charge for ATSI’s withdrawal obligation, MISO’s attempt to increase ATSI’s withdrawal obligation violates the filed-rate doctrine. According to ATSI, the MISO Parties’ proposal for ATSI to pay for Legacy MTEP Projects as of June 1, 2011, the day after ATSI’s withdrawal from MISO became effective, violates the well-settled rule against retroactive ratemaking, which prohibits regulated utilities from retroactively increasing their rates for tariff services.¹³⁰ ATSI concludes that the MISO Parties cannot modify the

¹²⁷ *Id.* at 17 (quoting MVP Order, 133 FERC ¶ 61,221 at P 471; citing *Ark. La. Gas Co. v. Hall*, 453 U.S. at 577-78; *Towns of Concord v. FERC*, 955 F.2d 67, 75 (D.C. Cir. 1992); *Midwest Indep. Transmission System Operator, Inc.*, 131 FERC ¶ 61,174, at P 129 (2010)).

¹²⁸ *Id.* at 18 (citing MISO Applicants April 1, 2011 Filing at 2).

¹²⁹ *Id.* at 19 (citing *Midwest Indep. Transmission Sys. Operator Inc.*, 135 FERC ¶ 61,255, at P 7 (2011)).

¹³⁰ *Id.* at 20 (citing *Town of Norwood v. FERC*, 202 F.3d 392, 400 (1st Cir. 2000); *Consolidated Edison Co. of New York v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003); *Pacific Gas & Electric Co. v. FERC*, 373 F.3d 1315, 1320 (D.C. Cir. 2004); *Associated Gas Distributors v. FERC*, 897 F.2d 574, 355 (D.C. Cir. 1990); *New York Indep. Sys.*

MISO Tariff to impose additional withdrawal obligations on ATSI retroactively after ATSI's departure from MISO, and they cannot argue that a retroactive increase in the charges to ATSI is permitted because ATSI had notice that it would be obligated to pay for Legacy MTEP Project costs.¹³¹ Rather, ATSI argues that MISO's filed rate schedules provided no notice to ATSI that MISO would seek to shift responsibility to ATSI for Legacy MTEP Project costs that the MISO Tariff allocated to other entities, and that it did not receive such notice from the MISO Parties' filings in connection with ATSI's withdrawal. Finally, ATSI argues that the MISO Parties have not supported their request for a June 1, 2011 retroactive effective date, but rather offer only a superficial request for waiver, stating in a footnote that "[g]ood cause exists to grant ... waivers because June 1, 2011 is the effective date of ATSI's withdrawal from the [MISO]."¹³² ATSI concludes that the Commission should refuse to implement the MISO Tariff changes proposed by the MISO Parties and should instead accept those submitted in the ATSI June 30, 2011 Compliance Report.¹³³

b. MISO Parties Answer to the ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing

84. The MISO Parties argue that ATSI's protest seeks to re-write existing provisions of the MISO Transmission Owners Agreement and the MISO Tariff to absolve ATSI of its financial obligations to MISO. The MISO Parties assert that their compliance filing complies with the Commission's limited condition "to remove or modify certain language that suggests that ATSI's wholesale transmission customers bear responsibility for any remaining financial obligation for MTEP [Projects]."¹³⁴ Further, the MISO Parties argue that their compliance filing is consistent with the MISO Tariff and Transmission Owners Agreement, which establish a Transmission Owner's financial obligations upon withdrawal, including MTEP costs that were allocated to the owner's

Operator, Inc., 122 FERC ¶ 61,267, at PP 51-67 (2008); *Borough of Chambersburg v. PJM Interconnection, LLC*, 117 FERC ¶ 61,219 (2006); *Midwest Indep. Transmission Sys. Operator Inc.*, 131 FERC ¶ 61,174, at P 129 (2010)).

¹³¹ *Id.* at 21.

¹³² *Id.* at 22.

¹³³ *Id.* at 1, 20, 22.

¹³⁴ MISO Parties Answer to the ATSI Protest to the MISO Parties June 30, 2011 Compliance Filing at 5 (quoting MISO Order, 135 FERC ¶ 61,204 at P 13).

zone prior to that owner's withdrawal.¹³⁵ They argue that this interpretation is consistent with Commission precedent approving MISO's RECB transmission expansion cost allocation methodology, and approving MISO's Multi Value Project transmission planning and cost allocation proposal.¹³⁶

85. The MISO Parties argue that as a signatory to the MISO Transmission Owners Agreement, it is ATSI that is obligated to fulfill all withdrawal obligations under the MISO Transmission Owners Agreement, including satisfying all financial obligations. The MISO Parties also argue that determining that the financial obligations contemplated by the MISO Transmission Owners Agreement do not apply in ATSI's case because ATSI was not a MISO transmission customer would render the MISO Transmission Owners Agreement and Attachment FF provisions meaningless and would contravene the Commission's repeated findings that remaining MISO Transmission Owners not be harmed by cost shifts due to a transmission owner's withdrawal.¹³⁷

86. In addition, the MISO Parties point out that ATSI previously agreed to pay an exit fee that encompasses costs allocated to ATSI transmission zone customers under MISO Tariff Schedules 10, 16, and 17. According to the MISO Parties, ATSI has provided no basis for distinguishing Legacy MTEP Project costs from other costs that ATSI has agreed to pay upon its withdrawal from MISO, and ignores Commission precedent holding that inclusion of MTEP Project costs in a withdrawing transmission owner's financial obligation is "consistent with the Commission's previous actions regarding the creation and inclusion of Schedules 16 and 17 cost allocations into ... [MISO's Tariff]."¹³⁸

¹³⁵ *Id.* at 6 (citing MISO Transmission Owners Agreement, Art. V § II.B; MISO Tariff, Attachment FF § III.A.2.j; MVP Order, 133 FERC ¶ 61,221 at P 470; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

¹³⁶ *Id.* at 6-7 (citing RECB I Order, 118 FERC ¶ 61,209 at P 193; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83; MVP Order, 133 FERC ¶ 61,221 at PP 470-71).

¹³⁷ *Id.* at 8-9 (citing RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83; *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 54 n.63 (2002)).

¹³⁸ *Id.* at 10 (quoting RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

87. The MISO Parties argue that ATSI's claim that the MISO Order "nowhere mentions any obligation of ATSI to pay for Legacy MTEP Project costs"¹³⁹ ignores the plain language of the MISO Order, which indicated that ATSI's obligations under Article V, Section II.B of the MISO Transmission Owners Agreement "consists of various components, one of which is at issue in this proceeding: the remaining financial obligations incurred under MISO's RECB cost allocation process prior to the date of withdrawal."¹⁴⁰

88. Finally, the MISO Parties argue that ATSI's filed rate doctrine and retroactive ratemaking arguments are inapposite because the existing provisions of the MISO Tariff and Transmission Owners Agreement compel ATSI to honor its financial obligations upon withdrawal, including Legacy MTEP Project costs. The MISO Parties argue that, for ATSI to claim now that its financial obligation for Legacy MTEP Project costs was never part of the MISO Tariff prior to the MISO Parties June 30, 2011 Compliance Filing is in error because the MISO Tariff contains provisions accepted by the Commission that govern a withdrawing entity's financial obligation.¹⁴¹ Further, the MISO Parties assert that ATSI has acknowledged that its financial obligations upon withdrawal from MISO include Legacy MTEP Project costs, consistent with MISO's filed rate dating back to April 1, 2007. With respect to ATSI's argument that the MISO Parties June 30, 2011 Compliance Filing does not satisfy the requirements for filing under section 205 of the FPA, the MISO Parties argue that adopting MISO Tariff provisions to implement the payment mechanism for ATSI's financial obligations under existing MISO Transmission Owners Agreement and MISO Tariff provisions does not amount to a rate increase necessitating the detailed cost support that ATSI demands.¹⁴²

c. MISO Parties Motion to Reject the ATSI June 30, 2011 Compliance Report

89. The MISO Parties argue that the ATSI June 30, 2011 Compliance Report significantly exceeds the limited conditions of the MISO Order, contravenes Commission precedent governing the recovery of legacy MTEP Project costs from withdrawing transmission owners, and is not authorized by the MISO Order or MISO governing

¹³⁹ *Id.* at 12 (quoting ATSI July 21, 2011 Protest at 5).

¹⁴⁰ *Id.* (quoting MISO Order, 135 FERC ¶ 61,204 at P 2 n.4).

¹⁴¹ *Id.* at 13 (citing RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 2).

¹⁴² *Id.* at 14.

documents. Therefore, the MISO Parties request that the Commission reject the ATSI June 30, 2011 Compliance Report.

90. The MISO Parties contend that under long-established Commission policy, compliance filings must be limited to the specific conditions ordered by the Commission; the sole purpose of a compliance filing is to make the changes directed by the Commission.¹⁴³ They also assert that, if a compliance filing includes revisions that exceed the Commission's specific conditions, the Commission rejects such revisions as outside the scope of the order.¹⁴⁴ The MISO Parties argue that the MISO Tariff revisions proposed in the ATSI June 30, 2011 Compliance Report significantly exceed the express requirements of the MISO Order. They state that the compliance requirements of the MISO Order were clear and required "Applicants to ... remove or modify certain language that suggests that ATSI's wholesale transmission customers bear responsibility for any remaining financial obligations for MTEP Projects."¹⁴⁵ The MISO Parties explain that this condition was "based on the Commission's finding in the [PJM] Order that ATSI cannot recover 'Legacy MTEP Project' costs at this time without a further showing"¹⁴⁶ and therefore directed the parties only to remove language suggesting that ATSI's customers would be required to pay Legacy MTEP Project costs.

91. The MISO Parties assert that, rather than limit its response to removing language suggesting cost responsibility for ATSI transmission customers, ATSI's proposed revisions remove all recovery for Legacy MTEP Project costs constructed by MISO Transmission Owners, while maintaining cost recovery from MISO customers for MTEP Projects constructed by ATSI. The MISO Parties argue that the Commission should reject ATSI's self-serving attempt to recover costs from MISO while denying just and reasonable cost recovery to the MISO Transmission Owners.¹⁴⁷ The MISO Parties argue that nowhere in the MISO Order did the Commission indicate that the MISO

¹⁴³ MISO Parties Motion to Reject the ATSI June 30, 2011 Compliance Report at 4-5 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 125 FERC ¶ 61,156, at P 57, n.51 (2008); *Northwestern Corp.*, 113 FERC ¶ 61,215, at P 9 (2005); *Tampa Elec. Co.*, 113 FERC ¶ 61,159, at P 37 (2005); *AES Huntington Beach, LLC*, 111 FERC ¶ 61,079 at P 60).

¹⁴⁴ *Id.* at 5 (citing *Northwestern Corp.*, 113 FERC ¶ 61,215 at P 9).

¹⁴⁵ *Id.* (quoting MISO Order, 135 FERC ¶ 61,204 at P 13).

¹⁴⁶ *Id.* (quoting MISO Order, 135 FERC ¶ 61,204 at P 13).

¹⁴⁷ *Id.* at 6.

Transmission Owners should be denied recovery of Legacy MTEP Project costs, nor did the MISO Order reject the proposed Schedule 37 methodology for calculating MISO Transmission Owner revenue requirements or the billing of Legacy MTEP Project costs to PJM, as agent for ATSI. The MISO Parties argue that compliance with the MISO Order can be achieved simply by removing from Schedule 37 and Attachment GG references to the “ATSI Zone” and “transmission customers taking transmission service for deliveries in the ATSI zone,” as proposed in the MISO Parties June 30, 2011 Compliance Filing.

92. The MISO Parties assert that the MISO Transmission Owners Agreement and MISO Tariff expressly provide that when an entity withdraws from MISO, MISO and remaining MISO Transmission Owners are entitled to recover from the withdrawing entity its remaining financial obligations, including MTEP costs, allocated to the entity’s transmission zone prior to its withdrawal.¹⁴⁸ According to the MISO Parties, the MISO Order recognized this, and required only limited revisions to Schedule 37 and Attachment GG to eliminate language that suggested that ATSI’s transmission customers should bear responsibility for ATSI’s financial obligations upon withdrawal from MISO.¹⁴⁹ The MISO Parties explain that this condition was premised on the Commission’s finding in the PJM Order that ATSI failed to demonstrate that it was just and reasonable for ATSI to recover its Legacy MTEP Project costs and other RTO realignment costs from its transmission customers, not that ATSI was absolved from fulfilling its financial obligations to MISO upon its withdrawal.¹⁵⁰ The MISO Parties contend that ATSI’s proposed revisions however would eliminate MISO’s ability to recover from ATSI its financial obligations for Legacy MTEP Projects costs, which was not envisioned by the MISO Order or PJM Order, and would result in an inappropriate subsidy by MISO customers to ATSI.

93. The MISO Parties also assert that the provisions of the MISO Transmission Owners Agreement and Attachment FF of the MISO Tariff entitle MISO to recover from a transmission owner the costs associated with all financial obligations, including MTEP costs that were allocated to the transmission owner’s zone prior to that owner’s

¹⁴⁸ *Id.* at 8-9 (citing Transmission Owners Agreement, Art. V § II.B; MISO Tariff, Attachment FF § III.A.2.j; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

¹⁴⁹ *Id.* (citing MISO Order, 135 FERC ¶ 61,204 at n.4).

¹⁵⁰ *Id.* (citing MISO Order, 135 FERC ¶ 61,204 at P 13; PJM Order, 135 FERC ¶ 61,198 at P 59).

withdrawal.¹⁵¹ According to the MISO Parties, Commission precedent addressing these provisions supports retaining the proposed Schedule 37 Attachment GG language that governs recovery of Legacy MTEP Project costs from ATSI.¹⁵²

94. Finally, the MISO Parties argue that the ATSI June 30, 2011 Compliance Report is procedurally improper and is not authorized by the MISO Order or the MISO governing documents. Specifically, the MISO Parties assert that, because the MISO Order required the submission of a compliance filing to revise the MISO Tariff, MISO and its transmission-owning members, who have rights to revise the MISO Tariff, submitted the MISO Compliance Filing.¹⁵³ They state that ATSI was invited to join the MISO June 30, 2011 Compliance Filing, but refused to do so and instead filed the ATSI June 30, 2011 Compliance Report. The MISO Parties explain that because ATSI is no longer a member of MISO or a party to the MISO Transmission Owners Agreement, ATSI's proposed revisions to the MISO Tariff are improper.

d. ATSI Answer to the MISO Parties' Motion to Reject

95. ATSI argues that the Commission should accept the ATSI June 30, 2011 Compliance Report because it does not exceed the conditions of the MISO Order. ATSI argues that it has no obligation to pay MISO for Legacy MTEP Project costs as part of the exit fee due upon its withdrawal because it had no obligation to pay MTEP Project costs before its withdrawal from MISO,¹⁵⁴ arguing that the MISO Tariff imposes the obligation to pay for MTEP Projects on transmission customers that use its transmission system, not on transmission owners. ATSI asserts that as a transmission-only company, ATSI was never a transmission customer under the MISO Tariff, and no costs of any

¹⁵¹ *Id.* at 10 (citing MISO Transmission Owners Agreement, Art. V § II.B; MISO Tariff, Attachment FF § III.A.2.j; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

¹⁵² *Id.* at 10-11 (citing RECB I Order, 118 FERC ¶ 61,209 at P 193; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83; MVP Order, 133 FERC ¶ 61,221 at P 471).

¹⁵³ *Id.* at 12 (citing MISO Tariff § 9; MISO Transmission Owners Agreement, Appendix K).

¹⁵⁴ ATSI Answer to the MISO Parties Motion to Reject at 6.

MTEP project were ever allocated to ATSI under any provision of the MISO Tariff prior to ATSI's withdrawal.¹⁵⁵

96. ATSI also asserts that the MISO Parties' claim that Commission precedent obligates ATSI to pay for Legacy MTEP Project costs, even though neither the MISO Tariff nor the MISO Transmission Owners Agreement creates such an obligation is wrong. According to ATSI, the Commission's decisions that the MISO Parties rely on hold that transmission upgrade costs may form part of a withdrawing transmission owner's financial obligations, but only if those costs were previously allocated to the transmission owner.¹⁵⁶ ATSI contends that the Commission did not hold that a transmission owner can be required to pay for financial obligations of other entities that pay costs allocated to the transmission owner's zone.¹⁵⁷

97. ATSI argues that, contrary to the MISO Parties' argument, nothing in the Commission's order on MISO's Multi Value Projects holds or suggests that a withdrawing transmission owner becomes responsible for the financial obligations of any other entity.¹⁵⁸ Additionally, ATSI contends that MISO acknowledged in the Exit Fee Agreement that Legacy MTEP Project costs are not part of ATSI's withdrawal obligation.¹⁵⁹

98. ATSI contends that the Commission should correct the inconsistent treatment of Legacy MTEP Project costs by accepting the continuation of MTEP Project cost recovery from ATSI zone transmission customers. ATSI points out that the PJM Order denied the continued recovery of Legacy MTEP Project costs from ATSI zone transmission customers until a further showing is made, and directed ATSI to remove those costs from its transmission rates. ATSI asserts that it complied fully with this requirement,¹⁶⁰ arguing that there is no legal basis for the MISO Parties' proposal to shift to ATSI the responsibility of ATSI's transmission customers to pay Legacy MTEP Project costs.

¹⁵⁵ *Id.* at 7.

¹⁵⁶ *Id.* at 8-9 (citing RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83).

¹⁵⁷ *Id.* at 10 (citing RECB I Order, 118 FERC ¶ 61,209 at P 193).

¹⁵⁸ *Id.* at 10 (citing MVP Order, 133 FERC 61,221 at P 470).

¹⁵⁹ *Id.* at 11 (citing Exit Fee Agreement § 3.2; *Midwest Indep. Transmission Sys. Operator, Inc.*, 135 FERC ¶ 61,255, at P 7 (2011)).

¹⁶⁰ *Id.* at 12.

ATSI asserts that the correct solution is for the Commission to permit PJM to continue to recover these costs from transmission customers in the ATSI zone, and to pass those amounts onto MISO for distribution to the MISO Transmission Owners.¹⁶¹

99. Finally, ATSI asserts that the ATSI June 30, 2011 Compliance Report is not procedurally improper. ATSI argues that the MISO Order imposed a compliance obligation on all of the MISO Applicants, including ATSI. ATSI states that as one of the original joint applicants in this proceeding, it had the obligation and the right to submit a compliance filing in response to the Commission's MISO Order.

4. Commission Determination

a. Procedural Matters

100. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We will accept the answers filed by the MISO Parties and ATSI because they have provided information that assisted us in our decision-making process.

b. Substantive Matters

101. We will accept the MISO Parties June 30, 2011 Compliance Filing, subject to condition, as discussed below.¹⁶² We find that the MISO Parties June 30, 2011 Compliance Filing partially complies with the conditions in the MISO Order, which required removal or modification of tariff language suggesting that ATSI's wholesale transmission customers bear responsibility for any remaining obligation for Legacy MTEP Projects costs.¹⁶³ We find the MISO Parties' revisions to remove reference to the "ATSI Zone" and simply reference "ATSI" in its place throughout Schedule 37 partially complies with the Commission conditions to remove references to cost recovery from "ATSI wholesale transmission customers." We also find that MISO has revised Section 2(h)(v) to Attachment GG to add the words "drive-through and drive-out" as

¹⁶¹ *Id.* at 12-13.

¹⁶² The Commission can revise a proposal filed under section 205 of the FPA as long as the filing utility accepts the change. *See City of Winnfield v. FERC*, 744 F.2d 871, 875-77 (D.C. Cir. 1984). The filing utility is free to indicate that it is unwilling to accede to the Commission's conditions by withdrawing its filing.

¹⁶³ MISO Order, 135 FERC ¶ 61,204 at P 13.

directed in the MISO Order.¹⁶⁴ However, we find that the MISO Parties did not remove language in Sections III.C and III.D of Schedule 37 referencing PJM as the designated agent of ATSI, consistent with the Commission's conditions in the MISO Order requiring removal or modification of tariff language suggesting that anyone other than ATSI bears responsibility for Legacy MTEP Projects costs. ATSI is responsible for payment of Legacy MTEP Project costs and the remittance by ATSI directly, under the terms of Schedule 37. Accordingly, we direct the MISO Parties to submit a further compliance filing, within 30 days of the date of issuance of this order, to remove "PJM, as the designated agent of" from Section III.C of Schedule 37 and to remove references to PJM in Section III.D of Schedule 37. Further, we find that Section IV.D of the MISO Compliance Filing, although it provides that "MISO shall remit an amount to PJM, for and on behalf of ATSI," does not require revision because it provides for remittance by MISO to PJM for MTEP Projects built by ATSI, as allowed under Attachment II of the PJM Tariff.¹⁶⁵

102. We reject ATSI's argument that the Commission should reject the MISO Parties June 30, 2011 Compliance Filing because the MISO Parties do not demonstrate that ATSI is obligated to pay Legacy MTEP Project costs. As discussed above, Legacy MTEP Project costs are a withdrawal obligation of ATSI.¹⁶⁶

103. We also agree with the MISO Parties that the ATSI June 30, 2011 Compliance Report exceeds the limited conditions of the MISO Order and therefore is not authorized by the MISO Order. Moreover, we agree with the MISO Parties that ATSI's proposed revisions remove all recovery for MTEP Project costs constructed by MISO Transmission Owners while maintaining cost recovery from MISO customers for Legacy MTEP projects constructed by ATSI. We find this exceeds the Commission's conditions to remove references to cost recovery from "ATSI wholesale transmission customers." In this instance, the ATSI June 30, 2011 Compliance Report exceeds the limited conditions of the MISO Order because it proposes revisions that remove all recovery for Legacy MTEP Project costs for projects constructed by MISO Transmission Owners from ATSI, while maintaining cost recovery from MISO customers for MTEP Projects constructed by ATSI. These revisions do not comply with the MISO Order, which required removal or modification of Tariff language suggesting that ATSI's transmission customers bear responsibility for any remaining obligation for Legacy MTEP Projects. Thus, we reject the ATSI June 30, 2011 Compliance Report.

¹⁶⁴ *Id.* P 14.

¹⁶⁵ *See supra* P 64.

¹⁶⁶ *See supra* PP 34-44.

VI. Settlement Agreements

A. Settlement Agreements

104. On December 21, 2012, ATSI submitted, on behalf of itself, AMP, and Buckeye Power, Inc. (Buckeye) (together, the PJM Settling Parties), a settlement agreement (PJM Settlement) to resolve all pending issues with respect to ATSI's proposal in Docket Nos. ER11-2814-000, *et al.* and ER11-2815-000, *et al.* to make revisions to the PJM Tariff in connection with ATSI's integration into PJM. The PJM Settlement provided, among other things, that PJM will collect Legacy MTEP Project costs from transmission customers in the ATSI transmission zone and forward the payments to MISO, and ATSI will guaranty PJM's payment obligations.

105. On the same date, ATSI submitted, on behalf of itself, MISO, and the MISO Transmission Owners a settlement agreement (MISO Settlement) to resolve all pending issues with respect to the withdrawal of ATSI from MISO. The MISO Settlement provided for the recovery of Legacy MTEP Projects Costs from ATSI transmission customers.

B. Order Rejecting Settlements

106. On September 19, 2013, the Commission rejected both the PJM Settlement and the MISO Settlement because the proposed tariff changes set forth in each settlement had not been shown to be just and reasonable.¹⁶⁷ In the Order Rejecting Settlements, the Commission found that the PJM Settlement would impose the same PJM Tariff changes as proposed in the PJM Realignment Filing, but that ATSI provided neither additional support for why those Tariff changes are just and reasonable nor a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment.¹⁶⁸ The Commission stated that the parties to the PJM Settlement negotiated special consideration only for the settling parties, and submitted PJM Tariff revisions that would impose the costs of ATSI's RTO transition on other transmission customers. The Commission also concluded that ATSI has not shown why it is not unduly discriminatory for AMP and Buckeye to be exempted from paying transition costs when other customers are not.¹⁶⁹

¹⁶⁷ *PJM Interconnection, L.L.C.*, 144 FERC ¶ 61,207 (2013) (Order Rejecting Settlements).

¹⁶⁸ *Id.* P 52.

¹⁶⁹ *Id.* P 53.

107. The Commission rejected the MISO Settlement for the same reasons. The Commission explained that, in the MISO Order, the Commission required ATSI and MISO to remove or modify tariff language suggesting that ATSI's wholesale transmission customers bear responsibility for ATSI's financial obligation for Legacy MTEP Projects costs. The Commission found that the MISO Settlement neither makes these required changes, nor does it provide either additional support for why its tariff changes are just and reasonable or a cost-benefit analysis showing that the benefits to wholesale transmission customers exceed the costs of the realignment.¹⁷⁰ Thus, the Commission found that the MISO Settlement does not result in just and reasonable rates.

C. Requests for Rehearing of the Order Rejecting Settlements, Docket Nos. ER11-2814-004, ER11-2815-006 and ER11-3279-003

108. On October 21, 2013, ATSI, AMP, and Cleveland Public Power submitted requests for rehearing of the Order Rejecting Settlements. AMP and Cleveland Public Power jointly argue that the Commission's refusal to accept the PJM Settlement and MISO Settlement was arbitrary, capricious and an abuse of discretion. AMP and Cleveland Public Power request that the Commission grant rehearing and accept these Settlements. ATSI argues that the Commission erred in the Order Rejecting Settlements by rejecting the Settlements based on the mistaken finding that the Settlements improperly discriminate against certain wholesale transmission customers, and contends that unrebutted record evidence contradicts the Commission's finding. ATSI asserts that the Commission failed to engage in reasoned decision-making when it rejected Settlements that implemented an approved retail settlement that shared RTO transition costs among ATSI's retail distribution affiliates and their retail customers.¹⁷¹ According to ATSI, the Settlements would not result in a special deal for the settling parties to the detriment of other wholesale customers; rather the Settlements would provide for a sharing of RTO transition costs (including allocated costs of legacy transmission upgrades) among ATSI and the customers paying ATSI zone transmission charges in accordance with agreements accepted by those customers or the state regulatory authority responsible for establishing their retail rates.¹⁷²

¹⁷⁰ *Id.* P 57.

¹⁷¹ ATSI Request for Rehearing of the Order Rejecting Settlements at 18-19, referring to the Public Utilities Commission of Ohio's (Ohio Commission) approval of the Ohio Retail Settlement establishing the rates of the retail customers that ultimately pay the ATSI costs allocated to its affiliated customers.

¹⁷² *Id.* at 20.

109. ATSI also argues that the Order Rejecting Settlements incorrectly suggests that there are other unaffiliated wholesale transmission customers served by ATSI's retail distribution affiliates who are excluded from the settlements.¹⁷³ With respect to the PJM Settlement, ATSI asserts that the only wholesale transmission customers who actively participated in the proceeding, AMP and Buckeye, executed and support the PJM Settlement, and that the only other wholesale customers responsible for transmission charges in the ATSI zone are the four retail distribution affiliates of ATSI in Ohio and Pennsylvania, none of which objected to the Settlements. Moreover, ATSI contends that the Commission erred in disregarding the evidence showing that the Settlements implement the rulings of the Ohio Commission's approval of the Ohio Retail Settlement. According to ATSI, if the Commission had evaluated the Settlements in conjunction with the retail rulings, it would have recognized that the Settlements are not unduly discriminatory by exempting AMP and Buckeye, but not ATSI's affiliated wholesale customers, from paying certain RTO transition costs.

110. ATSI argues that, in approving the Ohio Retail Settlement, the Ohio Commission approved a sharing of RTO transition costs between retail customers and the affiliated retail distribution companies. ATSI claims that neither the exit fee nor PJM costs will be charged to the retail customers. ATSI argues that the retail distribution affiliates agreed to absorb up to \$360 million in Legacy RTEP Project costs that would otherwise have been charged to their retail customers in Ohio under the PJM Tariff.¹⁷⁴ ATSI also asserts that the only portion of the costs associated with the RTO realignment decision subject to the Settlements that those retail customers will pay are the share of Legacy MTEP Project costs allocated to them, internal integration costs, and Long-Term Firm Transmission Rights settlement costs.¹⁷⁵

111. ATSI explains that the Ohio Retail Settlement implemented the sharing of RTO transition costs that the Ohio Commission approved, and implemented a different sharing of RTO transition costs to which ATSI's unaffiliated customers, AMP and Buckeye, agreed. ATSI states that with respect to the unaffiliated customers, ATSI agreed to absorb RTO transition costs relating to MISO, while the customers agreed to pay their shares of Legacy RTEP Project costs, with no requirement for ATSI to cover any portion of those costs.¹⁷⁶ ATSI contends that it is not inconsistent with the Commission's

¹⁷³ *Id.* (citing Order Rejecting Settlements, 144 FERC ¶ 61,207 at P 54).

¹⁷⁴ *Id.* at 25 (citing Ohio Retail Settlement, Stipulation and Recommendation, Mar. 23, 2010, at § C.2; Second Supplemental Stipulation, July 22, 2010, at § C.6).

¹⁷⁵ *Id.* at 21-22.

¹⁷⁶ *Id.* at 22.

exclusive jurisdiction over ATSI's transmission rates for the Commission to consider the combined impact of the PJM Settlement and the Ohio rate plan in assessing the fairness and reasonableness of the Settlements, and if it had it done so, the Commission would have recognized that no one was "exempt" from paying a share of RTO transition costs.

112. ATSI further asserts that the only party opposing the Settlement is the Ohio Consumers' Counsel, which by its own admission, represents only retail customer interests, and that the Commission correctly determined that this proceeding concerns only wholesale Commission-jurisdictional rates, finding that the "state determination made with respect to a retail rate settlement prior to the [PJM Order] is not determinative and does not address the justness and reasonableness of the proposed revisions to PJM's wholesale transmission tariff."¹⁷⁷ ATSI concludes that the Commission should not have given any weight to the Ohio Consumers' Counsel's objections, which were purportedly advanced on behalf of the same retail customers whose interests the Ohio Commission addressed in its orders.

113. Additionally, according to ATSI, the Commission should have recognized the Ohio Consumers' Counsel's objections as a collateral attack on the Ohio Commission's order approving the Ohio Retail Settlement. ATSI argues that the Ohio Commission found that retail customers were well-served by the Ohio Retail Settlement and related rate plan, and there was no need for the Commission to consider the Ohio Consumers' Counsel's objections again. Further, ATSI points out that the state regulatory authorities charged with protecting the interests of the retail customers of ATSI's affiliated wholesale customers did not object to the PJM Settlement, and entered orders consistent with its treatment of RTO transition costs. ATSI also states that in addition to adopting a retail rate plan that implemented the RTO transition cost-related provisions of the Ohio Retail Settlement, the Ohio Commission withdrew its intervention in the ATSI integration proceeding and its request for rehearing of the Commission order approving ATSI's realignment.¹⁷⁸ Therefore, ATSI contends that the Commission should have disregarded the Ohio Consumers' Counsel's objections to the impact of the Settlements on Ohio retail rates.

¹⁷⁷ *Id.* (quoting Order Rejecting Settlements, 144 FERC ¶ 61,207 at P 54).

¹⁷⁸ *Id.* at 24 (citing Ohio Commission Notice of Withdrawal, Docket No. ER09-1589-000 (filed Feb. 23, 2011)).

114. Further, ATSI asserts that the Commission's reliance on *High Island Offshore System, L.L.C. (HIOS)*¹⁷⁹ was misplaced because it is distinguishable from this case.¹⁸⁰ ATSI contends that in *HIOS*, the natural gas shippers who did not share in the \$3 million payment did not receive any other benefits from the settlement. ATSI argues that, by contrast, in this case, the retail customers who pay the transmission costs allocated to ATSI's retail distribution affiliates will receive significant, although different, benefits through the retail rate plan established under the Ohio Retail Settlement. ATSI also argues that the settlement proposal in *HIOS* was opposed by one of only two firm shippers on the High Island Offshore System, and the shipper stated that it might obtain interruptible service from HIOS during the term of settlement and, in that event could be required to pay the settlement's interruptible rates, which gave it a direct interest in the outcome of the proceeding. ATSI argues that here, the only objecting party, the Ohio Consumers' Counsel, claims to represent retail interests that the Commission found to be immaterial to wholesale transmission rates at issue in this proceeding, and which the Ohio Commission addressed conclusively. ATSI argues that in *HIOS* Commission Trial Staff opposed the settlement on the grounds that it provided a special deal to the Indicated Shippers. ATSI argues that here Trial Staff filed initial comments in the ATSI rate proceeding but did not oppose the Settlements, or take issue with the provisions of the Settlements exempting AMP and Buckeye.¹⁸¹

115. AMP and Cleveland Public Power also argue that the Commission erred in rejecting the Settlements based on a finding that the Settlements would confer greater benefits on settling parties than other customers, and therefore finding the Settlements to be unduly discriminatory. According to AMP and Cleveland Public Power, this finding is erroneous because it imposes on ATSI an affirmative duty to show that the PJM Settlement was consistent with the prohibition against undue discrimination set forth in section 205(b).¹⁸² AMP and Cleveland Public Power argue that nothing in the Commission's regulations governing the submission of offers of settlement imposes such

¹⁷⁹ *High Island Offshore System, L.L.C.*, 110 FERC ¶ 61,043 (2005), *aff'd*, *Petal Gas Storage, L.L.C. v. FERC*, 496 F.3d 695 (D.C. Cir. 2007).

¹⁸⁰ ATSI Request for Rehearing of the Order Rejecting Settlements at 25 (citing Order Rejecting Settlements, 144 FERC ¶ 61,207 at P 53 (citing *HIOS*, 110 FERC ¶ 61,043 at P 30)).

¹⁸¹ *Id.* at 26 (citing Initial Comments of Commission Trial Staff at 1, 5 (Docket Nos. ER11-2814 and ER11-2815, filed January 10, 2013)).

¹⁸² 16 U.S.C. § 824d(2) (2012).

an obligation.¹⁸³ AMP and Cleveland Public Power contend that if Trial Staff believed that the Settlements are unduly discriminatory, it would have been obliged to oppose them, which it did not do.

116. In addition, AMP and Cleveland Public Power argue that the Commission failed to engage in reasoned-decision making because it disregarded the effect of retail regulatory actions pertaining to ATSI's recovery of its transition costs, including the Ohio Commission's approval of the Ohio Retail Settlement that, according to AMP and Cleveland Public Power, significantly limits the recovery of ATSI's transition costs from Ohio retail customers.¹⁸⁴ AMP and Cleveland Public Power assert that contrary to the suggestion in the Order Rejecting Settlements, the PJM Settlement did not result in reduced costs to the settling wholesale transmission customers at the expense of retail customers incurring costs associated with ATSI's move from MISO to PJM. Rather, according to AMP and Cleveland Public Power, ATSI negotiated settlements with Ohio retail and wholesale customers, which afforded each group a level of protection from the costs associated with ATSI's RTO switch.

117. According to AMP and Cleveland Public Power, the Commission disregarded long-standing precedent holding that the existence of a settlement is a factual element that renders a difference in rates between otherwise similarly situated customers not "undue."¹⁸⁵ AMP and Cleveland Public Power argue that this precedent applies here, where both groups of customers are subject to separately negotiated settlements that differ in certain respects. They contend that the Commission approved a bilateral settlement that imposed tariff charges on non-party customers, even when the settling

¹⁸³ ATSI Request for Rehearing of the Order Rejecting Settlements at 8 (citing 18 C.F.R. § 385.602 (2015)).

¹⁸⁴ *Id.* at 8-9 (citing Reply Comments of ATSI at 17 (Docket Nos. ER11-2814 and ER11-2815, filed January 22, 2013)).

¹⁸⁵ *Id.* at 11-12 (citing *Cities of Bethany v. FERC*, 727 F.2d 1131 (D.C. Cir. 1984); *Cities of Newark v. FERC*, 763 F.2d 533, 546 (3rd Cir. 1985); *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 212 (D.C. Cir. 1984); *Town of Norwood v. FERC*, 202 F.3d 392, 402 (1st Cir. 2000)).

parties received consideration that was not available to the non-party customers,¹⁸⁶ and provided “special consideration only for the settling parties.”¹⁸⁷

118. ATSI also argues that, because the Settlements were not contested, the Commission erred in applying the standard of review for contested settlements.¹⁸⁸ According to ATSI, the Ohio Consumers’ Counsel’s opposition to the Settlements did not make them “contested” under the Commission’s Rules of Practice and Procedure, and the Commission acted inconsistently with its own regulations, and contrary to the FPA, by evaluating the Settlements as contested.¹⁸⁹ ATSI argues that, because the Ohio Consumers’ Counsel raised no general issue of material fact regarding the reasonableness of the Settlements’ resolution of the issues, and did not present any affidavits to support its opposing comments, the Settlements were uncontested under the Commission’s rules.¹⁹⁰ ATSI contends that the Commission routinely treats comments stating a party’s opposition to a settlement as insufficient to render a settlement “contested,” where no genuine issue of fact is alleged, and no affidavits are supplied in accordance with Rule 602 of the Commission’s Rules of Practice and Procedure.¹⁹¹

119. According to ATSI, there was ample evidence in the record demonstrating that the Settlements are indeed a fair and reasonable means of resolving the long-pending disputes in these proceedings, and are in the public interest. Specifically, ATSI argues that: (1) the Settlements resolve two lengthy and contentious proceedings related to

¹⁸⁶ *Id.* at 13 (citing *Enterprise TE Products Pipeline Co. LLC*, 143 FERC ¶ 61,197 (2013)).

¹⁸⁷ *Id.* (quoting Order Rejecting Settlements, 144 FERC ¶ 61,207 at P 53).

¹⁸⁸ *Id.* at 19 (citing 5 U.S.C. § 706(2) (2006); section 205 of the FPA; *Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970), *cert. denied*, 403 U.S. 923 (1971)).

¹⁸⁹ *Id.* at 26-27.

¹⁹⁰ *Id.* at 27 (citing 18 C.F.R. § 385.602(f)(4) (2015)).

¹⁹¹ *Id.* (citing *San Diego Gas & Elec. Co. v. Sellers of Energy and Ancillary Services*, 126 FERC ¶ 61,007, at P 20 (2009); *Chevron Pipe Line Co.*, 74 FERC ¶ 63,007, at 65,010, *aff’d*, 75 FERC ¶ 61,124 (1996); *Wisconsin Power & Light Co.*, 72 FERC ¶ 63,010, at 65,141, *aff’d*, 73 FERC ¶ 61,095 (1995); *Trunkline Gas Co.*, 89 FERC ¶ 63,004, at 65,004 (1999)).

ATSI's integration into PJM and are "unopposed by all parties in interest;"¹⁹² (2) the Settlements represent and implement agreements to share RTO transition costs between ATSI and the customers who pay the ATSI zone transmission rates, including ATSI's unaffiliated wholesale customers and the state regulatory authorities that regulate the rates of ATSI's affiliated customers; and (3) the negotiations and processes used in developing both Settlements were comprehensive, inclusive, and time consuming, and the procedures employed by the parties ensured that all relevant and affected parties were provided adequate notice of and opportunity for participation in the settlement discussions concerning issues which may affect them.

120. ATSI further argues that the Ohio Consumers' Counsel's repetition of its objections to the sharing arrangement for retail customers in Ohio, after the Ohio Commission considered and rejected them, does not make the Settlements unfair or unreasonable. In addition, ATSI contends that, although they are not parties to the MISO Settlement, just the PJM Settlement, AMP and Buckeye are the only wholesale transmission customers who actively participated in the proceeding, and that throughout the settlement process, ATSI reached out to the Ohio Consumers' Counsel seeking to include it in the settlement discussions, to no avail.¹⁹³

121. ATSI contends that there was substantial evidence in the record supporting approval of the Settlements and that the Commission erred in failing to take this evidence into account. ATSI argues that, even assuming that the Commission's finding that the Settlements were contested was correct, the Commission should still have approved them because it has broad authority and discretion to address contested settlements.¹⁹⁴ According to ATSI, the Settlements represent and implement agreements to share RTO transition costs by addressing the concerns of all wholesale transmission customers, and that, while the Ohio Consumers' Counsel renewed its objection to the sharing of transition costs at the retail level – that the Ohio Commission had approved – such sharing raised no genuine issue of material fact.

122. In addition, ATSI contends that a cost-benefit analysis is not required to demonstrate that the Settlements were just and reasonable, and that the record evidence demonstrates that the interests of all relevant parties were protected even without the

¹⁹² *Id.*

¹⁹³ *Id.* at 29.

¹⁹⁴ *Id.* at 30 (citing *Arctic Slope Reg. Corp. v. FERC*, 832 F.2d 158, 164 (D.C. Cir. 1987); *United Municipal Distributors Group v. FERC*, 732 F.2d 202, 208 (D.C. Cir. 1984); 18 C.F.R. § 385.602(h)(1)(i) (2015)).

submission of a cost-benefit analysis.¹⁹⁵ ATSI contends that a cost-benefit analysis is not needed with respect to ATSI's unaffiliated wholesale customers, AMP and Buckeye, who are not required to pay RTO transition costs relating to MISO costs under the Settlements, and are required to pay their respective share of Legacy RTEP Project costs; rather, the analysis is needed only to the extent Commission orders in other dockets imposing those costs on customers in the ATSI zone are affirmed on judicial review.

123. Further, ATSI argues that a cost-benefit analysis is not needed with respect to ATSI's affiliated retail distribution companies or their customers because even though the Settlements permit ATSI to charge Legacy MTEP Project costs to them, the customers would have paid these same costs if ATSI had remained in MISO.¹⁹⁶ According to ATSI, the Settlements create a different mechanism for the recovery of Legacy MTEP Project costs and the flow-through of the resulting revenues, but they do not impose any incremental costs on these customers. Based on this reasoning, ATSI asserts that the Order Rejecting Settlements provides no justification for requiring a cost-benefit analysis to approve a settlement when the level of charges does not change. ATSI contends that the Commission in the Order Rejecting Settlements identified no reason why further analysis is necessary in order to determine that the Settlements are fair and reasonable with respect to these customers.¹⁹⁷

124. ATSI also argues that the Settlements, if accepted by the Commission, would resolve ATSI's request for rehearing on the issue of the Commission's cost-benefit analysis requirement. According to ATSI, one of the purposes of the Settlements is to settle ATSI's challenge to the validity of the cost-benefit analysis requirement, and if the Commission insists that the Settlements must comply with the requirement, then the Settlements would be pointless.¹⁹⁸ AMP and Cleveland Public Power similarly contend that the Commission erred in rejecting the PJM Settlement based on the view that the only avenue for ATSI to recover its RTO transition costs was a section 205 filing that included a cost-benefit analysis showing net benefits to customers.¹⁹⁹

¹⁹⁵ *Id.* at 19, 32 (citing Order Rejecting Settlements, 144 FERC ¶ 61,207 at P 52).

¹⁹⁶ *Id.* at 32 (citing PJM Realignment Filing, Exhibit FE-100 (Ziegler Testimony) at 12).

¹⁹⁷ *Id.* at 33.

¹⁹⁸ *Id.*

¹⁹⁹ AMP and Cleveland Public Power Request for Rehearing of the Order Rejecting Settlements Order at 6-7 (quoting *Morgan Stanley Capital Group Inc. v. Public*

125. In addition, ATSI argues that the Commission should approve the Settlements because Commission Policy strongly favors settlements, particularly in difficult cases such as this.²⁰⁰ ATSI contends that both Settlements here are consistent with these policies in that they avoid further costs and litigation burdens for all parties and the Commission. In this regard, ATSI contends that to require the settling parties to submit a cost-benefit analysis would be in direct conflict with the Commission's settlement policies because it would mean that they would incur the unnecessary and burdensome expense of preparing the analysis, other parties would have the burden of responding, and the Commission would need to devote the resources necessary to evaluate the analyses.

126. Further, ATSI argues that the Commission should have approved the Settlements because they resolve two lengthy and contentious proceedings related to ATSI's integration into PJM, and, absent the Settlements, the parties and the Commission will be required to engage in protracted litigation, expending considerable time and resources. ATSI argues that the Settlements also eliminate the need for additional proceedings that would have arisen if ATSI was compelled to make a new section 205 filing to pass through the transition costs.²⁰¹ AMP and Cleveland Public Power also argue that the Commission erred in disregarding the fact that the PJM Settlement allows the parties to avoid costly and contentious litigation, which is an outcome that is consistent with the Commission's long-standing policy favoring settlements. AMP and Cleveland Public Power contend that the Commission's rejection of the PJM Settlement is directly at odds with the Commission's efforts to encourage the negotiated resolution of cases that would consume substantial Commission and party resources to litigate.²⁰²

127. AMP and Cleveland Public Power further argue that in rejecting the PJM Settlement on the ground that it conferred benefits on settling parties that were not offered to non-party customers, the Commission applied a new "all or none" rule: [a] settlement must confer the same benefits on all affected customers, lest it be deemed

Utility District No. 1 of Snohomish County, 554 U.S. 527, n.2 (2008) (citing *Permian Basin Area Rate Cases*, 390 U.S. 747, 822 (1968))).

²⁰⁰ *Id.* at 33 (citing *Duke Energy Trading and Marketing Co.*, 117 FERC ¶ 61,039, at P 12 (2006); *Devon Power LLC*, 115 FERC ¶ 61,340, at P 66, *order on reh'g*, 117 FERC ¶ 61,133 (2006)).

²⁰¹ *Id.* at 31.

²⁰² *Id.* at 16 (citing *Duke Energy Trading & Marketing Co.*, 117 FERC ¶ 61,039, at P 12 (2006) (*Duke Energy Trading*)).

‘unduly discriminatory[.]’”²⁰³ They argue that the Commission also has pointed out, if rate settlements cannot survive the mandate of section 205(b), “no utility company could afford to risk anything less than a full and complete settlement with all its customers...individual customers would have no incentive to settle.”²⁰⁴ Thus, AMP and Cleveland Public Power assert that the Commission’s rejection of the PJM Settlement greatly reduces the incentive of any individual customer or group of customers to negotiate a settlement because unless the same terms are offered to all customers the settlement may be rejected as unduly discriminatory.

D. Commission Determination

1. Procedural Matters

128. The Ohio Consumers’ Counsel submitted a motion for leave to answer and answer to the requests for rehearing of the Order Rejecting Settlements, and AMP submitted an answer in response.

129. Rule 713(d)(1) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2015), prohibits answers to a request for rehearing. Therefore, we reject the answers to the requests for rehearing submitted by the Ohio Consumers’ Counsel and AMP.

2. Substantive Matters

130. We deny the requests for rehearing submitted by ATSI, AMP, and Cleveland Public Power. On rehearing, ATSI, AMP and Cleveland Public Power offer no new arguments to support their contentions that the Order Rejecting Settlements was in error. Rather, they repeat arguments that the Commission previously addressed and rejected in the Order Rejecting Settlements.

131. First, the Commission properly treated the Settlements as contested settlements given the Ohio Consumers’ Counsel’s objection. The Ohio Consumers’ Counsel represents retail end-use customers who will be responsible for paying these rates and

²⁰³ *Id.* at 17.

²⁰⁴ *Id.* (citing *Delmarva Power & Light Co.*, 6 FERC ¶ 61,084, at 61,162 (1979)).

therefore have a legitimate basis for challenging the settlement.²⁰⁵ Even according to AMP and Cleveland Public Power, the Ohio Retail Settlement approved by the Ohio Commission “significantly limits the recovery of ATSI’s transition costs from Ohio retail customers”; it did not preclude recovery of the costs. Moreover, even for uncontested settlements, the Commission has an obligation to make an independent judgment as to whether the uncontested settlement is reasonable.²⁰⁶

132. Second, based on *HIOS*, the Commission properly concluded that a settlement with only some of the parties was unduly discriminatory and failed to protect similarly situated parties. The Settlement eliminated all exit and realignment charges for Buckeye and AMP, but continued to charge ATSI’s retail affiliates for those costs. As the Commission found in *HIOS*, the special treatment afforded to AMP and Buckeye undercuts the usual assumption that their agreement “shows that it is in the interest of other affected parties and consumers generally.”²⁰⁷

133. ATSI, AMP, and Cleveland Public Power argue that the Commission should take into account the Ohio Retail Settlement and that the retail settlement should be found determinative of what transmission charges ATSI is permitted to charge and recover at wholesale.²⁰⁸ We disagree. We can consider only wholesale rates, and, while AMP and Buckeye are held harmless under the wholesale Settlements, ATSI’s retail affiliates are not and therefore must incur substantially greater wholesale charges. We are in no position to evaluate the overall impact of a retail settlement, nor has ATSI even sought to demonstrate that potential retail benefits to customers of its affiliates are similar to the benefits received by AMP and Buckeye in being held harmless from all Legacy MTEP costs. Moreover, because FirstEnergy together with ATSI and its retail distribution affiliates have an identity of corporate economic interest, they cannot be treated as separate entities, and their lack of opposition to the wholesale Settlements does not

²⁰⁵ *Tejas Power Corp. v. FERC*, 908 F.2d 998 (D.C. Cir. 1990) (Commission must consider and respond to the views of end use customers); *Trailblazer Pipeline Co.*, 85 FERC ¶ 61,345, at 62,345 (Dec. 16, 1998) (recognizing that the Commission must take into account interests even of indirect customers).

²⁰⁶ *Tejas Power Corp. v. FERC*, 908 F.2d at 1003.

²⁰⁷ *HIOS*, 110 FERC ¶ 61,043 at P 33.

²⁰⁸ ATSI Request for Rehearing of the Order Rejecting Settlements at 22; AMP and Cleveland Public Power Request for Rehearing of the Order Rejecting Settlements at 8.

demonstrate the justness or reasonableness of the Settlements.²⁰⁹ Accordingly, we uphold the Commission's finding that the lack of objection from ATSI's retail distribution affiliates to the PJM Settlement or the Ohio Retail Rate Settlement has no bearing on the justness or reasonableness of the wholesale transmission tariff revisions that must be accepted by the Commission in order for the relevant terms of that settlement to apply.²¹⁰

134. ATSI cites to Trial Staff's lack of opposition to the Settlement as supporting the reasonableness of the Settlement. However, in its initial comments on the PJM Settlement, Trial Staff states that it "takes no position on the substantive provisions of the PJM Settlement inasmuch as it addresses issues that were explicitly excluded from the hearing by the Commission."²¹¹ In any event, Trial Staff's silence does not provide support for a contested settlement that is unduly discriminatory.

135. ATSI also objects to the requirement that a cost-benefit analysis should be required. We reject that argument for the same reasons we rejected ATSI's rehearing of the February 1, 2011 order.

136. With respect to the assertions of ATSI, AMP, and Cleveland Public Power that the MISO Settlement is not unduly discriminatory, as we explained in the Order Rejecting Settlements, the MISO Settlement would impose improperly the costs of the Legacy MTEP costs on ATSI's transmission customers when the Commission has not found those costs just and reasonable.

The Commission orders:

(A) The request for rehearing of the PJM Order is hereby denied, as discussed in the body of this order.

(B) The requests for rehearing and/or clarification of the MISO Order are hereby granted in part and denied in part, as discussed in the body of this order.

²⁰⁹ *Tejas Power Corp. v. FERC*, 908 F.2d at 1003 (Commission cannot rely on the acquiescence of a group of customers who may not have a sufficient incentive to minimize their costs).

²¹⁰ Order Rejecting Settlements, 144 FERC ¶ 61,207 at P 54.

²¹¹ Initial Comments of Commission Trial Staff at 1 (Docket Nos. ER11-2814 and ER11-2815, filed January 10, 2013).

(C) The requests for rehearing of the Order Rejecting Settlements are hereby denied, as discussed in the body of this order.

(D) The ATSI June 30, 2011 Compliance Filing, PJM June 13, 2011 Compliance Filing, and ATSI December 13, 2011 Compliance Filing Errata are hereby accepted, as discussed in the body of this order.

(E) The MISO Parties June 30, 2011 Compliance Filing is hereby accepted subject to condition, as discussed in the body of this order.

(F) The MISO Parties are hereby directed to submit a further compliance filing, within 30 days of the date of issuance of this order, as discussed in the body of this order.

(G) The ATSI June 30, 2011 Compliance Report is hereby rejected, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.