

146 FERC ¶ 61,111
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

ITC Holdings Corp.	Docket Nos. ER12-2681-000
Entergy Corporation	ER12-2681-001
Midwest Independent Transmission System Operator, Inc.	ER12-2681-002
Entergy Services, Inc.	ER13-948-001
ITC Arkansas LLC	ER13-782-000
ITC Texas LLC	ER13-782-001
ITC Louisiana LLC	(consolidated)
ITC Mississippi LLC	
Midcontinent Independent System Operator, Inc.	EL14-19-000
Entergy Services, Inc.	ER12-2683-001
Midcontinent Independent System Operator, Inc.	ER12-2682-000
	ER12-2682-001
	ER12-2682-002
	(not consolidated)

ORDER GRANTING IN PART, DENYING IN PART, AND DISMISSING IN PART
REHEARING, INSTITUTING SECTION 206 PROCEEDING, ESTABLISHING
HEARING AND SETTLEMENT JUDGE PROCEDURES, CONSOLIDATING
PROCEEDINGS AND TERMINATING PROCEEDINGS

(Issued February 20, 2014)

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1. On June 20, 2013, the Commission issued several orders conditionally accepting proposed tariff revisions submitted under section 205 of the Federal Power Act (FPA)¹ and Part 35 of the regulations of the Federal Energy Regulatory Commission (Commission),² and accepting and suspending certain proposed tariff revisions and established hearing and settlement judge procedures.³ The proposed tariff revisions were filed to effectuate the transfer of the transmission assets of Entergy Corporation (Entergy) and certain of its subsidiaries⁴ (together, the Entergy Applicants) to ITC Midsouth, a newly-created subsidiary of ITC Holdings Corp. (ITC Holdings) and certain of its subsidiaries⁵ (together, the ITC Applicants) (Entergy-ITC Transaction) and to effectuate the integration of the Entergy Applicants' transmission facilities into the Midwest Independent Transmission System Operator, Inc. (MISO).⁶ In this order, we grant in part, deny in part, and dismiss in part the requests for rehearing, institute an FPA section 206 proceeding in Docket No. EL14-19-000, establish a refund effective date, establish hearing and settlement judge procedures, consolidate certain proceedings, and terminate certain proceedings, as discussed below.

¹ 16 U.S.C. § 824d (2012).

² 18 C.F.R. Pt. 35 (2013).

³ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (Rates Order); *Midwest Indep. Transmission Sys. Operator, Inc.*, 143 FERC ¶ 61,258 (2013) (Module B-1 Order); *Entergy Services, Inc.*, Docket No. ER12-2683-000, at 1 (June 20, 2013) (delegated letter order) (Ancillary Services Order).

⁴ Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Texas, Inc. (Entergy Texas) (collectively, Entergy Operating Companies), and Mid South TransCo LLC (Entergy Mid South).

⁵ ITC Midsouth LLC (ITC Midsouth).

⁶ Effective April 26, 2013, MISO changed its name from "Midwest Independent Transmission System Operator, Inc." to "Midcontinent Independent System Operator, Inc."

I. Background

2. In April 2011, Entergy announced its intention to join MISO as a Transmission Owner effective December 19, 2013, subject to receiving the necessary regulatory approvals. Eight months later, while MISO was taking preparatory steps towards integrating Entergy into MISO, Entergy and ITC Holdings announced their proposal to separate Entergy's jurisdictional transmission facilities into six separate "wires-only" transmission subsidiaries of Entergy Mid South, a newly-formed subsidiary holding company of Entergy, to spin-off the ownership interests of Entergy Mid South to Entergy's shareholders, and then to merge Entergy Mid South with ITC Midsouth, a newly-formed subsidiary holding company of ITC Holdings.⁷ In order to meet both of these goals, the proposed integration of Entergy into MISO and the transfer of Entergy's transmission facilities to ITC Holdings through the proposed merger, Entergy, ITC Holdings, and MISO devised a "phased approach."⁸

3. The first phase of this process involved several Commission filings by MISO, ITC Holdings and Entergy to effectuate the transfer of Entergy's transmission assets to the four new operating companies that will hold the Entergy transmission facilities after the Entergy-ITC Transaction closes (the New ITC Operating Companies)⁹ and MISO's provision of transmission service on these facilities during the time after the Entergy-ITC Transaction closes and before integration of the generation and load within Entergy's footprint into MISO's energy and operating reserves markets.

4. In Docket No. ER12-2681-000, the ITC Applicants and the Entergy Applicants (collectively, Rates Applicants) filed tariff revisions as part of a Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of section 305(a) of the Federal Power Act (Rates Application).¹⁰ The ITC Applicants sought approval pursuant to FPA

⁷ Joint Application at 2.

⁸ *Id.*

⁹ The New ITC Operating Companies are: ITC Arkansas LLC (ITC Arkansas), ITC Texas, LLC (ITC Texas), ITC Louisiana LLC (ITC Louisiana) and ITC Mississippi LLC (ITC Mississippi).

¹⁰ Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of section 305(a) of the Federal Power Act, Docket Nos. EC12-145-000, ER12-2681-000,

section 205 of a proposed company-specific Attachment O formula rate template to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) for the New ITC Operating Companies.¹¹ In addition to approval of the formula rate template, Applicants also requested approval of several new rate schedules under the MISO Tariff, and several jurisdictional agreements. Rates Applicants stated that the proposed rate construct is integral to the Entergy-ITC Transaction, and that the proposed formula rate, rate schedules and jurisdictional agreements included in the Rates Application will provide the Commission with a “complete picture” of the Entergy-ITC Transaction.¹²

5. On February 11, 2013, in Docket No. ER13-948-000, MISO and Entergy Services, Inc. (Entergy Services), on behalf of the Entergy Operating Companies, filed company-specific Attachment O formula rate templates to the MISO Tariff for each of the Entergy Operating Companies that included a proposal for transmission pricing zones (TPZ) (TPZ Filing).¹³ These formula rate templates are referred to as the Entergy Operating Companies MISO Attachment O formula rates in this order. The Entergy Operating Companies stated that the rates proposed in the TPZ Filing would be used in the event that the Entergy-ITC Transaction fails to close and Entergy retains its transmission assets. The Entergy Operating Companies explained that if the Entergy-ITC Transaction does close, these rates will be used by the New ITC Operating Companies to bill for transmission service during the interim period from the date that the Entergy-ITC Transaction closes to the date that the Entergy transmission system is fully integrated into MISO, which is expected to occur December 19, 2013, subject to true-up. The Entergy

and EL12-107-000 (filed Sept. 24, 2012) (collectively, Joint Application). On December 3, 2012, Applicants filed corrections to certain statements in the Joint Application and accompanying testimony. Errata, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (Dec. 3, 2012) (Errata to Joint Application).

¹¹ The *pro forma* MISO Attachment O formula rate template was approved in *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, *order on reconsideration*, 85 FERC ¶ 61,250, *order on reh’g*, 85 FERC ¶ 61,372 (1998); *Midwest Indep. Transmission Sys. Operator, Inc.*, 87 FERC ¶ 61,189 (1999).

¹² Joint Application at 2. According to Applicants, MISO joined the Joint Application as “Administrator of the MISO Tariff and as a signatory to the Appendix I Agreement submitted [with the Joint Application] for acceptance, but otherwise takes no position on the substance of [the Joint Application].” Joint Application at 3.

¹³ Entergy Services, Inc., Attachment O Templates to MISO Tariff, Docket No. ER13-948-000 (filed Feb. 11, 2013).

Operating Companies also proposed to establish four transmission pricing zones in MISO.

6. On January 18, 2013, in Docket No. ER13-782-000, the New ITC Operating Companies proposed accounting and ratemaking treatment for certain pension and post-retirement welfare (OPEB) plan costs that relate to the approximately 750 employees of Entergy that will become ITC Holdings employees as part of the Entergy-ITC Transaction (OPEB Filing).¹⁴

7. On June 20, 2013, in the Rates Order, which addressed the Rates Application, OPEB Filing and TPZ Filing,¹⁵ the Commission summarily resolved certain issues including, as relevant to this order, return on equity (ROE), TPZ Filing and parallel loop flows issues. The Commission set other aspects of the proposed rates for the New ITC Operating Companies and the Entergy Operating Companies for hearing and settlement judge procedures.

8. On September 24, 2012, Entergy made the Ancillary Services Filing,¹⁶ which proposed Tariff provisions for generation-based ancillary services, generator imbalance service, and generator regulation service. On June 20, 2013, in the Ancillary Services Order, the Commission accepted the Ancillary Services Filing.

9. On September 24, 2012, MISO filed the Module B-1 Filing,¹⁷ which proposed a new and temporary section to be added to its Tariff for the purpose of providing transmission service over transmission lines that Entergy was planning to sell to ITC Holdings. Module B-1 set forth the terms and conditions of service over the Entergy transmission facilities for the six month interim period between the time Entergy's transmission facilities were to be transferred to ITC, until Entergy integrated with MISO. On June 20, 2013, in the Module B-1 Order, the Commission accepted the Module B-1 Filing, subject to compliance filings.

¹⁴ New ITC Operating Companies, Accounting and Ratemaking Treatment for Pension and OPEB Costs, Docket No. ER13-782-000 (filed Jan. 18, 2013).

¹⁵ Rates Order, 143 FERC ¶ 61,257.

¹⁶ Entergy Services, Inc. Ancillary Services Tariff and Notice of Cancellation, Docket No. ER12-2683-000 (filed Sept. 24, 2012).

¹⁷ MISO, Filing of *Pro Forma* Tariff Sheets Including Proposed Module B-1 to MISO's Tariff, Docket No. ER12-2682-000 (filed Sept. 24, 2012).

10. Other related filings included a filing to terminate Service Schedule MSS-2 of the Entergy System Agreement¹⁸ and separate requests for authorizations under FPA section 204 to facilitate the Entergy-ITC Transaction.¹⁹

II. Requests for Rehearing and/or Clarification, and other Pleadings

11. Multiple parties filed requests for rehearing and/or clarification on multiple issues in the Rates Order.²⁰ Requests for rehearing and clarification were filed by Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company (GMO) and Empire District Electric Company (collectively, Kansas-Missouri Companies); and Arkansas Electric Cooperative Corporation (Arkansas Electric Cooperative). Requests for rehearing were filed by the Louisiana Public Service Commission (Louisiana Commission); Associated Electric Cooperative, Inc. (Associated Electric Cooperative)²¹; Tennessee Valley Authority (TVA); Southwest Power Pool (SPP); and Joint Customers.²²

¹⁸ Notice of Cancellation of Service Schedule MSS-2 under the Entergy System Agreement upon Consummation of Spin-Merger of Entergy Operating Companies' Transmission Business to ITC, Docket No. ER12-2693-000 (filed Sept. 26, 2012). Service Schedule MSS-2 concerns transmission equalization under the Entergy System Agreement. The System Agreement is a Commission-approved tariff that currently requires the generation and transmission facilities of the Entergy Operating Companies' (except Entergy Arkansas) to be operated as a single integrated operating system.

¹⁹ Separate requests for authorizations under FPA section 204 to facilitate the Entergy-ITC Transaction were filed in Docket Nos. ES13-5-000, ES13-6-000, and ES11-40-002. The Commission approved these requests on May 16, 2013. *See ITC Arkansas LLC*, 143 FERC ¶ 61,123 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,124 (2013); *Transmission Company Arkansas, LLC*, 143 FERC ¶ 61,125 (2013).

²⁰ We note that parties filed pleadings in Docket Nos. ER13-2379-000, ER13-2376-000 and ER13-2375-000 which also listed some of the above-captioned dockets. The issues raised in those proceedings will be addressed, as appropriate, in those dockets.

²¹ On January 7, 2014, Associated Electric Cooperative filed a motion to lodge the request for rehearing it had filed in Docket No. ER12-2681-001 in Docket No. ER13-948-000 as well.

²² Joint Customers are: Arkansas Electric Cooperative; Mississippi Delta Energy Agency and its two members, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City (collectively, MDEA); Municipal Energy Agency of Mississippi; and South Mississippi Electric Power Association (SMEPA). Arkansas Electric Cooperative states that it supports only the portion of Joint Customers' request

(continued...)

SPP Transmission Owners²³ filed a request for clarification and motion for settlement judge proceedings or request for rehearing. The Council of the City of New Orleans (City of New Orleans) filed a limited request for expedited rehearing.

12. On August 9, 2013, Southwestern Electric Cooperative filed a notice of withdrawal of its filings from the proceedings in Docket Nos. EC12-145-000, EL12-107-000, ER12-2681-000 and ER12-2682-000.

13. On September 13, 2013, ITC Holdings filed a compliance filing in Docket No. ER12-2681-002, as directed in the Rates Order, with the ITC Midsouth Operating Company formula rate implementation protocols. Notice of the compliance filing was published in the *Federal Register*, 78 Fed. Reg. 58,298 (2013), with interventions and protests due on or before October 4, 2013. Organization of MISO States, Inc. (Organization of MISO States) filed a notice of intervention and motion requesting a 14-day extension of the comment period, which the Commission granted on September 26, 2013, extending the comment period to October 18, 2013. Missouri Public Service Commission and Northern Indiana Public Service Company filed motions to intervene. Organization of MISO States and Joint Customers filed protests.

14. On October 31, 2013, MISO filed an informational report (MISO Informational Report) to update the Commission on the negotiations between SPP and MISO regarding potential revisions to the existing MISO-SPP Joint Operating Agreement (MISO-SPP JOA). On November 18, 2013, SPP filed a protest to the MISO Informational Report (SPP Protest of Informational Report).

for rehearing related to ROE, capital structure and income tax allowance. Municipal Energy Agency of Mississippi states that it supports only the portion of Joint Customers' request for rehearing related to ROE and capital structure. Joint Customers Request for Rehearing at 1 & n.1-2.

²³ SPP Transmission Owners are: Kansas City Power & Light Company (KCP&L), KCP&L Greater Missouri Operations Company; The Empire District Electric Company; Westar Energy, Inc.; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; Oklahoma Gas and Electric Company; Omaha Public Power District; Lincoln Electric System; American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company; Nebraska Public Power District; and City Utilities of Springfield, Missouri.

15. The SPP Transmission Owners and the Kansas-Missouri Companies filed requests for rehearing and clarification of the Ancillary Services Order.²⁴ On August 6, 2013, MISO filed an answer to the SPP Transmission Owners' request for rehearing and clarification in Docket Nos. ER12-2681-000, ER13-948-000, ER13-782-000, ER12-2682-000, and ER12-2683-000.

16. On July 22, 2013, MISO filed a compliance filing in Docket No. ER12-2682-001, as directed by the Module B-1 Order, with a description of the process for transitioning customers receiving service under Entergy's Tariff to receiving service under Module B-1. Notice of the compliance filing was published in the *Federal Register*, 78 Fed. Reg. 45,519 (2013), with interventions and protests due on or before August 12, 2013. Southwestern Power Administration filed a motion to intervene and protest. LSP Transmission Holdings, LLC filed a protest in various dockets unrelated to this proceeding, as well as in Docket No. ER12-2682-001.

17. On December 13, 2013, ITC and Entergy filed a Notice of Termination of Transaction in Docket No. EC12-145-000, notifying the Commission that the Entergy-ITC Transaction would not occur. Also on December 13, 2013, Applicants filed a Motion to Withdraw Filings and Terminate Proceedings of ITC Holdings, ITC Arkansas, ITC Texas, ITC Louisiana, and ITC Mississippi in Docket Nos. ER12-2681-000, ER12-2681-002, and ER13-782-000. On December 19, 2013, MISO filed a Motion to Withdraw Filings and Terminate Proceedings in Docket Nos. ER12-2682-000, ER12-2682-001, and ER12-2682-002.

III. Discussion

A. Procedural Matters

18. We grant Rate Applicants' Motion to Withdraw Filings and Terminate Proceedings in Docket Nos. ER12-2681-000, ER12-2681-002, and ER13-782-000. We also grant MISO's Motion to Withdraw Filings and Terminate Proceedings in Docket Nos. ER12-2682-000, ER12-2682-001, and ER12-2682-002. Further, because the Entergy-ITC Transaction did not occur, the requests for rehearing and clarification in Docket Nos. ER12-2681-001, ER13-782-001, and ER12-2683-001 are dismissed as moot.

19. Accordingly, the only issues remaining on rehearing are those raised in Docket No. ER13-948-001 that are applicable to the Entergy Operating Companies, which are

²⁴ These filings were also made in the Module B-1 proceeding in Docket No. ER12-2682-002.

summarized and discussed below. We will grant in part and deny in part these requests for rehearing. Further, as discussed below, we institute an FPA section 206 proceeding in Docket No. EL14-19-000, establish a refund effective date, establish hearing and settlement judge procedures, and consolidate Docket No. EL14-19-000 with the ongoing proceedings in Docket No. ER13-948-000 for purposes of settlement, hearing and decision.

B. Substantive Matters

1. Return on Equity

a. Rates Order

20. In the Rates Order, the Commission found that it was consistent with Commission precedent for the Entergy Operating Companies to use the then-current ROE that has been approved for use by all MISO Transmission Owners if they become members of MISO. The Commission explained that it has previously approved a single base ROE for transmission-owning members of MISO, and has found that “[t]ransmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement.”²⁵ The Commission found that notwithstanding the alternative discounted cash flow analysis and other evidence protestors submitted to challenge the MISO ROE, protestors had not demonstrated why the Entergy Operating Companies should not be entitled to the same treatment as all other transmission-owning members of MISO.²⁶

b. Request for Rehearing

21. Joint Customers argue on rehearing that they supported their position that the 12.38 percent ROE should not be approved for the Entergy Operating Companies with substantial, reliable evidence. They point to the affidavit and supporting materials prepared by an expert witness that provided a cost of common equity analysis for the Entergy transmission assets that tracks the methodology applied to establish the 12.38 percent MISO ROE in 2002. Joint Customers contend that the results of this analysis showed that the median value for a just and reasonable ROE for a single company was 8.85 percent and 8.91 percent for a group of companies. Thus, Joint Customers maintain that they provided analysis using the Commission’s methodology

²⁵ Rates Order, 143 FERC ¶ 61,257 at P 61 (quoting *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 83 (2012)).

²⁶ *Id.* PP 60-61.

that the ROE sought for the Entergy Operating Companies exceeds a just and reasonable return by at least 347 basis points. They contend that neither the Entergy Operating Companies nor any other participant presented any countervailing evidence that the requested 12.38 percent ROE is just and reasonable. Joint Customers assert that the Rates Order summarizes portions of the affidavits and exhibits but does not consider the method or findings and does not use the evidence in setting forth the basis for the determination.²⁷ The Louisiana Commission points out on rehearing that the decline in corporate bond yields between 2002 and the current time period, as well as the capital cost estimates for fully integrated electric utilities in its own witness testimony, demonstrate a decline in bond yields, which indicate a cost of capital that is well below the return on equity requested by Applicants. It also asserts that the risk for common equity capital under a formula rate construct at the Commission is substantially less than the risk that exists generally with publicly-traded electric utilities subject to traditional rate-base, rate-of-return regulation.²⁸

22. Joint Customers likewise challenge the Commission's finding that the Entergy Operating Companies are "entitled" to the MISO ROE. They assert that the FPA does not vest in the Entergy Operating Companies an enforceable legal right to collect any set of rates or charges other than those that have been proven to be just, reasonable, and not unduly discriminatory or preferential for them. Joint Customers argue that the automatic grant of a 12.38 percent ROE without any analysis of those entities' actual costs of common equity does not comport with the Commission's duty under the FPA to establish just and reasonable rates based on the facts and circumstances of each section 205 filing as presented in the evidence of record.²⁹

23. Joint Customers also assert that they should not bear the burden of demonstrating that Applicants are not entitled to a 12.38 percent ROE. They contend that the Commission's finding that Applicants are entitled to the requested ROE shifts the burden on them even though they demonstrated that applying the 12.38 percent ROE to the Entergy transmission assets would produce unjust and unreasonable charges for service. As such, Joint Customers maintain that, at minimum, this issue should have been set for hearing.³⁰

²⁷ Joint Customers Request for Rehearing at 6-9.

²⁸ Louisiana Commission Request for Rehearing at 5-7.

²⁹ Joint Customers Request for Rehearing at 10-12.

³⁰ *Id.* at 13-14.

24. Additionally, Joint Customers take issue with the Commission's position that the only remedy for the ROE issue is under FPA section 206. They assert that because this proceeding involves applications under FPA section 205, Applicants bear the burden of showing that their proposal will result in just and reasonable rates and that there is no basis for the Commission's finding that if protestors believe 12.38 percent is unreasonable in the context of these section 205 applications, their only remedy is to challenge the MISO ROE itself. Joint Customers maintain that the course of action described in the Rates Order would require protestors to litigate against all existing MISO transmission owners and that there is no basis in law for relegating protestors to a section 206 remedy in these circumstances. They contend that the Rates Order deprives Entergy's customers of the protection under FPA section 205 concerning the ROE to be applied to their service.³¹

c. Commission Determination

25. We affirm the Commission's finding in the Rates Order that the Entergy Operating Companies may use the then-current ROE that has been approved for use by all MISO Transmission Owners upon integration with MISO and therefore we deny rehearing on this issue. As the Commission stated in the Rates Order, approving the use of the MISO ROE by the Entergy Operating Companies is consistent with Commission precedent that new members of MISO are entitled to use the then-current ROE that has been approved for use by all MISO Transmission Owners. While parties on rehearing continue to challenge the just and reasonableness of the MISO ROE, this is not the proper proceeding to raise such issues. As the Commission stated in the Rates Order, if parties wish to change the MISO ROE, they must file a separate FPA section 206 complaint. We note that a complaint filed by multiple MISO customers regarding the MISO base ROE is now pending before the Commission in Docket No. EL14-12-000. Challenges to the MISO ROE will be addressed in that proceeding.

2. Transmission Pricing Zones

a. Rates Order

26. In the Rates Order, the Commission accepted the Entergy Operating Companies' proposal for four transmission pricing zones and ITC Holdings' proposal to adopt the zones approved for the Entergy Operating Companies. The Commission stated that its acceptance was based on the fact that the integration of the Entergy Operating Companies into MISO will significantly alter the way service over Entergy's transmission assets as MISO will be the entity administering transmission service over Entergy's transmission

³¹ *Id.* at 14-16.

system. Thus, the Commission found the proposal consistent with the use of license plate pricing in MISO.³²

27. The Commission explained that the Entergy Operating Companies have provided transmission service at a single system average rate under the Entergy OATT, and that upon the Entergy Operating Companies' proposed integration into MISO, service will be provided on a regional basis over the entire MISO system and priced using MISO's license plate zonal rate design. The Commission further stated that under the license plate zonal rate design, customers pay a single non-pancaked rate based on the cost of existing facilities and new local facilities in their pricing zone, plus the cost of new regional facilities allocated to that zone or shared regionally, and have access to the entire MISO system. The Commission stated that this change in the way service is provided and priced over Entergy's transmission system supports the use of multiple transmission pricing zones, which allows Entergy to adopt the current zonal structure in MISO.

28. The Commission acknowledged on-going negotiations with respect to transmission pricing zones, but determined that only the Entergy Operating Companies' transmission pricing zone proposal was before it. However, the Commission stated that its acceptance of the Entergy Operating Companies' transmission pricing zone proposal was without prejudice to Entergy making an additional filing seeking to establish a fifth zone for the Entergy New Orleans service territory.³³

b. Request for Rehearing

29. The City of New Orleans takes issue with the Commission's approval of the Louisiana-wide transmission pricing zone proposal. The City of New Orleans contends that this determination was inexplicable because the Commission stated that it agreed with the City of New Orleans' arguments in support of a separate transmission pricing zone for Entergy New Orleans, but nevertheless stated that the Entergy New Orleans transmission pricing zone was not before the Commission. The City of New Orleans contends that the issue was before the Commission because it protested Entergy's proposal to force Entergy New Orleans into a single Louisiana-wide transmission pricing zone in several pleadings. It asserts that neither Entergy nor any other party offered evidence regarding why Entergy New Orleans must be part of a Louisiana-wide transmission pricing zone, and that the City of New Orleans never agreed that this issue should wait pending negotiations with the Louisiana Commission. The City of New Orleans asserts that if the Commission's decision relies on negotiations with the

³² Rates Order, 143 FERC ¶ 61,257 at P 122.

³³ *Id.* P 127.

Louisiana Commission, that reliance is misplaced because the Louisiana Commission has no intention of agreeing to a single transmission pricing zone for Entergy New Orleans.³⁴

30. The City of New Orleans argues that it presented evidence that supports an Entergy New Orleans transmission pricing zone and that no other party rebutted any of this evidence. It cites its arguments that requiring Entergy New Orleans to be part of a Louisiana-wide transmission pricing zone is inconsistent with Commission precedent and MISO practices, is unduly discriminatory and preferential because it will drastically increase Entergy New Orleans' transmission rates, and will permanently shift costs from the Entergy Louisiana and Entergy Gulf States Louisiana systems to Entergy New Orleans' retail ratepayers. As such, the City of New Orleans maintains that the Commission erred in relying on Entergy's statements regarding negotiations over the transmission pricing zone issue between the parties rather than ruling on the evidence before it, and that the Commission should have ordered Entergy to make a filing for an Entergy New Orleans transmission pricing zone.³⁵

31. Additionally, the City of New Orleans contends that Entergy's unilateral statement that it is engaging in negotiations would not remove the transmission pricing zone issue from controversy before the Commission and does not take away the Commission's authority to rule on an issue on the merits.³⁶ It asserts that the tariff provisions are discriminatory because they treat Entergy New Orleans differently, without cause, than the Entergy Operating Companies in Texas, Mississippi, and Arkansas, and Cleco in Louisiana. The City of New Orleans further argues that forcing Entergy New Orleans into a Louisiana-wide transmission pricing zone will unreasonably increase Entergy New Orleans customer costs and subjugate the City of New Orleans' jurisdiction over Entergy New Orleans to the Louisiana Commission.³⁷

32. The City of New Orleans points to the Louisiana Commission's order on Cleco's application to join MISO and the Louisiana Commission's comments in the Rates Order proceeding as rationale for including Entergy New Orleans' transmission assets in an Entergy New Orleans transmission pricing zone. It asserts that in the Louisiana Commission proceeding, the Louisiana Commission's witness testimony explained that a single Cleco transmission pricing zone would be beneficial to its customers because they

³⁴ The City of New Orleans Request for Rehearing at 20.

³⁵ *Id.* at 21-22.

³⁶ *Id.* at 23.

³⁷ *Id.* at 24.

would pay only for transmission facilities owned by Cleco and not for Entergy Louisiana's transmission facilities. The City of New Orleans further asserts that additional Louisiana Commission witness testimony in that proceeding explained that including Cleco-owned transmission assets in the Louisiana-wide transmission pricing zone would harm Cleco's customers. In the order approving Cleco's membership in MISO, the Louisiana Commission required that all of Cleco's transmission assets be included in a Cleco-only transmission pricing zone. The City of New Orleans points out that despite the Louisiana Commission's approval of the Cleco transmission pricing zone, it refused to support a similar transmission pricing zone for Entergy New Orleans. It argues that there is no material difference between Entergy New Orleans and any other operating company, affiliated or not with Entergy that justifies the discriminatory treatment. Specifically, the City of New Orleans states that Entergy New Orleans, Entergy Arkansas, Entergy Mississippi, Entergy Texas and Cleco are each (1) a separate company; (2) a load serving entity; and (3) a transmission owner that owns its own transmission assets. Additionally, the City of New Orleans contends that each operating company is interconnected with, and to some extent uses the transmission systems of the other operating companies. Thus, the City of New Orleans maintains that there is no minimum transmission system size requirement or load requirement for a transmission pricing zone.³⁸

33. The City of New Orleans also argues that including Entergy New Orleans transmission assets in a Louisiana transmission pricing zone obligates Entergy New Orleans' rate payers to pay a share of the cost of every transmission project authorized by the Louisiana Commission for Entergy Gulf States Louisiana and Entergy Louisiana whether or not they benefit from the project. It asserts that this prevents the City of New Orleans from protecting Entergy New Orleans ratepayers against unjust and unreasonable increases in cost, particularly where no commensurate benefit is provided. Additionally, the City of New Orleans points out that the Louisiana Commission has no jurisdictional obligation to approve construction or siting of transmission facilities intended to benefit Entergy New Orleans' rate payers.³⁹

34. The City of New Orleans further asserts that Entergy New Orleans retail ratepayers will be required to pay a load ratio share of Entergy Louisiana's and Entergy Gulf States Louisiana's current and future transmission facilities irrespective of voltage level, which subsidizes costs beyond what the Entergy System Agreement currently requires. It explains that under the Entergy System Agreement, each Entergy Operating Company recovers the cost of providing retail service on its own transmission system

³⁸ *Id.* at 27-28.

³⁹ *Id.* at 28.

from its own retail customers. In addition to these costs, under Service Schedule MSS-2 of the Entergy System Agreement, each Entergy Operating Company contributes to or receives a share of the cost of Entergy system-wide transmission assets at voltages at and above 230 kV based on the theory that all Entergy Operating Companies benefit from facilities at voltages at and above 230 kV. The City of New Orleans states that when an Entergy Operating Company exits the Entergy System Agreement, its obligations under Service Schedule MSS-2 terminates. Additionally, if the Entergy-ITC Transaction closes, then Service Schedule MSS-2 also terminates. However, the City of New Orleans states that under the TPZ proposal, Entergy New Orleans ratepayers will have to continue subsidizing Entergy Louisiana's and Entergy Gulf States Louisiana's transmission systems irrespective of whether the Entergy-ITC Transaction closes.⁴⁰ The City of New Orleans contends that if Entergy New Orleans is forced into a Louisiana transmission pricing zone it will forever be required to subsidize Entergy Louisiana's and Entergy Gulf States' transmission costs.⁴¹

35. Joint Customers take issue with the Commission's acceptance of the four transmission pricing zones, arguing that Entergy should continue to use its single-system wide rate. They contend that the Commission's focus on anticipated future operation and administration is in error because it loses sight of the fact that it fundamentally alters the pricing for Entergy's pre-existing set of transmission assets. Additionally, they argue that for the pricing of such assets to be just and reasonable, that pricing must also be consistent with the Commission's cost causation principle. Joint Customers assert that because the existing facilities were planned and built to serve the needs of all customers in the entire four state area served by the Entergy transmission system on a least cost basis without regard to state lines, only the continuation of single-system pricing for these historical facilities is based on cost incurrence, and therefore, this is the only just and reasonable pricing method. Joint Customers also maintain that it is error to equate what is possible under the MISO Tariff with what is permissible under Commission precedent and principles. They assert that the history of system-wide planning and pricing dictates adherence to a single pricing zone methodology to avoid violating long-standing Commission policy. Also, Joint Customers state that neither Entergy nor ITC Holdings has suggested that the Entergy transmission facilities will be operated in a non-integrated manner. Thus, Joint Customers maintain that neither the transfer of ownership of transmission facilities from the Entergy Operating Companies to the New ITC Operating Companies, nor the transfer of operational control of those facilities to MISO,

⁴⁰ *Id.* at 29-30.

⁴¹ *Id.* at 31.

necessitates abandonment of the long-standing, single pricing zone methodology.⁴² Joint Customers further argue that the four-zone pricing approach would abrogate the sharing of costs for facilities that were caused by needs of the entire system and that some zones will be charged for existing facilities that were designed to benefit the entire system, while others will obtain a relative “free-ride” by receiving the benefits from facilities they previously caused to be built.⁴³ Joint Customers contend that under the Rates Application, only the previously irrelevant state lines will determine who pays for the historical facilities, which violates that cost causation principle. Joint Customers argue that ministerial changes in the way service is provided as part of the transfer of operational control do not require the abandonment of system-wide pricing for such historical assets.

36. With respect to Commission precedent, Joint Customers assert that Entergy, ITC Holdings, the Arkansas Commission and City of New Orleans failed to demonstrate that any precedent they cite involved a group of affiliated operating companies whose transmission was planned, operated, coordinated, and priced on an integrated basis that were allowed to use multiple, disparate pricing zones solely because they joined an Independent System Operator (ISO) or Regional Transmission Organization (RTO). Joint Customers contend that only they presented a case with comparable circumstances where a company with integrated affiliates attempted to use multiple pricing zones with differing rates. They point to a case involving PJM Interconnection, L.L.C. (PJM), the PJM Zonal Rate Case,⁴⁴ in which the Commission rejected multiple pricing zones even though those companies previously had charged separate transmission rates. Joint Customers argue that this finding by the commission upheld the cost causation principle. However, Joint Customers maintain that in this case, the Commission relied on the City of New Orleans’ assertion that this and other cases cited by Joint Customers are no longer applicable because of the evolving nature of ISO/RTOs and because the opinions were issued prior to the repeal of the Public Utility Holding Company Act of 1935 (PUHCA). Joint Customers maintain that neither the portion of Order No. 888 relied on by City of New Orleans in making its argument nor the PJM Zonal Rate Order purports to rely on PUHCA in making the determination that a single-system rate should be used for affiliated systems. They point to Commission orders issued after the repeal of PUHCA

⁴² Joint Customers Request for Rehearing at 33-35.

⁴³ *Id.* at 36.

⁴⁴ *Pennsylvania-New Jersey-Maryland Interconnection*, 81 FERC ¶ 61,257, at 62,249 (1997) (PJM Zonal Rate Case), *aff’d in relevant part*, 92 FERC ¶ 61,282, at 61,951-52 (2000), *vacated in part*.

that explicitly relied on Order No. 888's requirement that certain public utility holding companies file single-system rates.⁴⁵

37. Joint Customers further argue that the Commission's conclusion in the Rates Order that upon integration of the transmission assets in MISO, service will be provided on a regional basis over the entire MISO system and priced using MISO's license plate zonal design, does not reference any assertion by Entergy, ITC Holdings or others, or any portion of the MISO Tariff, or any evidence to support a finding that the four-zone pricing proposal is necessitated by or is more consistent with license plate pricing than continuation of the historical single zone.⁴⁶ Joint Customers contend that the Commission's finding that joining an ISO/RTO that has received approval to implement license plate pricing allows Entergy to abandon system-wide pricing of existing facilities in favor of a four-zone structure makes the inappropriate leap to presuming that a four-zone approach would be superior to a single zone, or would not violate Commission precedent and principles. They point out that no party in this proceeding has provided any evidence for the Commission to conclude that a single zone would be antithetical to the license plate zonal rate design of MISO. Joint Customers argue that only the use of a single-system zone is just and reasonable and consistent with cost causation as applied to Entergy's existing transmission system because only the single-system zone is based on an allocation of costs to the loads that caused the costs at issue.⁴⁷

38. Joint Customers also request rehearing of the Commission's findings related to storm recovery settlement requirements. They argue that the Commission dismissed their concerns by observing that the Entergy Operating Companies have pledged to recover these costs in the zone where the storms occurred. However, Joint Customers maintain that the record does not support this assertion and that Entergy has not provided a clear statement that this will be accomplished under the four pricing zone construct. Additionally, Joint Customers assert that the Commission did not cite an adequate explanation from Entergy as to how this will be accomplished. They assert that without a specific requirement and a detailed explanation for how Entergy will limit recovery of such storm costs to the zone in which the storms occurred, there is no assurance that the storm cost securitization settlement obligations will be implemented in the manner relied upon by the Commission.⁴⁸

⁴⁵ Joint Customers Request for Rehearing at 39-40.

⁴⁶ *Id.* at 40.

⁴⁷ *Id.* at 40-41.

⁴⁸ *Id.* at 41-42.

39. Joint Customers point out that the Commission noted that the Arkansas and Mississippi Commissions have made separate pricing zones conditions for allowing Entergy Arkansas and Entergy Mississippi to transfer functional control of their transmission facilities to MISO, and argue that the Commission is not bound by the determinations of state commissions. Additionally, they assert that state commission rulings do not relieve the Commission of its obligation to ensure just and reasonable rates.⁴⁹

c. Commission Determination

40. We deny Joint Customers' and the City of New Orleans' requests for rehearing of the Commission's finding that that a proposal for a four zone configuration was not properly before the Commission. In the Rates Order, the Commission ruled on the proposal before it (i.e., the four zones) and whether that proposal was just and reasonable. Joint Customers and the City of New Orleans make arguments for a different zonal configuration than what was filed by Entergy; the Commission's statutory burden, however, under section 205 of the FPA, was to determine whether Entergy's proposal was just and reasonable. While other configurations could exist, and there may be compelling arguments for such configurations, the Commission ruled on the proposal before it and the facts surrounding that proposal.⁵⁰ We affirm our finding in the Rates Order that the four transmission pricing zones are just and reasonable.

41. As the Commission explained in the Rates Order, Entergy is proposing to establish transmission pricing zones for its transmission system, which is consistent with the implementation of license plate pricing in MISO.⁵¹ The way that service is provided on the Entergy transmission system changed fundamentally, with MISO becoming the transmission provider and service being provided under a regional tariff with a license plate zonal rate design, on December 19, 2013 upon Entergy's integration into MISO.

⁴⁹ *Id.* at 42.

⁵⁰ See *ISO New England, Inc.*, 138 FERC ¶ 61,042, at P 84 n.97 (2012) ("Faced with competing proposals, the Commission may approve a proposal as just and reasonable; it need not be the only reasonable proposal or even the most accurate."); *ISO New England, Inc.*, 138 FERC ¶ 61,027, at P 75 n.109 (2012); *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Cir. 1995) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one.").

⁵¹ See *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081 (2008).

Under the license plate zonal rate design, customers pay a single non-pancaked rate based on the cost of existing facilities and new local facilities in their pricing zone, plus the cost of new regional facilities allocated to that zone or shared regionally, and have access to the entire MISO system. This change in the way service is provided and priced over Entergy's transmission system supports the use of multiple transmission pricing zones, which allows Entergy to adopt the current zonal structure in MISO. Joint Customers, however, cite to precedent that requires a single rate among interconnected, affiliated transmission systems in support of their claims for a single rate across the Entergy transmission system.⁵² The precedent, however, was established at the inception of the Commission's approval of, and MISO and PJM's implementation of, license plate pricing, before the Commission gained experience with implementation of license plate pricing in PJM and other ISOs and RTOs. Since that time, the Commission has become more flexible with respect to license plate pricing, as the Commission has not only accepted the continued use of license plate pricing for existing and new local facilities on a long-term basis, but the Commission has also accepted reconfigurations of license plate pricing zones that deviate from historical configurations.⁵³

42. Moreover, the City of New Orleans' protest on this issue does not bring a proposal for a new transmission pricing zone before the Commission. The Commission's basis for approving four transmission pricing zones was based not on the status of negotiations between Entergy, the Louisiana Commission, and the City of New Orleans, but rather on the Commission's analysis of the proposal before it. As mentioned above, just as it is possible for there to be more than one just and reasonable methodology, there can be several possible zonal configurations that would comply with the implementation of license plate pricing in MISO. What was filed before the Commission was a proposal to create four transmission pricing zones and, should a fifth transmission pricing zone be proposed by Entergy, the Commission will consider such proposal at that time. Additionally, we disagree with the City of New Orleans' argument that the Rates Order subjugates its jurisdiction. The zonal rate design is subject to the Commission's

⁵² See, e.g., *Entergy Services, Inc.*, 58 FERC ¶ 61,234, at 61,769 (1992); *Southern Co. Services, Inc.*, 71 FERC ¶ 61,392, at 62,536 (1995); *PJM Zonal Rate Case*, 81 FERC ¶ 61,257, at 62,249 (1997).

⁵³ See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081 (2008); *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007), *order on reh'g and compliance filing*, Opinion No. 494-A, 122 FERC ¶ 61,082, *order denying reh'g*, 124 FERC ¶ 61,033 (2008); *PJM Interconnection, L.L.C.*, 96 FERC ¶ 61,061 (2001), *order on compliance filing*, 101 FERC ¶ 61,345 (2002), *order on reh'g*, 104 FERC ¶ 61,124 (2003); *Ameren Corp.*, 131 FERC ¶ 61,240, at PP 11, 20 (2010).

jurisdiction and MISO conducts its transmission planning under a Commission-approved process, the MISO Transmission Expansion Plan (MTEP).⁵⁴ The MTEP is an open and transparent, stakeholder-driven process by which MISO annually identifies transmission projects required to address system needs and produces an annual MTEP report.⁵⁵

43. Furthermore, we recognize the concerns raised by the City of New Orleans but note that those concerns have been rendered moot by the cancellation of the Entergy-ITC Transaction. Specifically, the City of New Orleans expresses concern that the Entergy New Orleans retail customers would be forced to subsidize the costs of the transmission systems of Entergy Louisiana and Entergy Gulf States Louisiana. However, because the transaction will not occur, Service Schedule MSS-2 and the exemption for bundled load⁵⁶ will still apply, and the Entergy New Orleans retail customers will be shielded from the concerns raised by the City of New Orleans. This arrangement is reflected in the Joint Pricing Zone Revenue Allocation Agreement between Entergy Louisiana, Entergy Gulf States Louisiana, and Entergy New Orleans whereby the three operating companies share transmission revenues.⁵⁷ The Joint Pricing Zone Revenue Allocation Agreement specifies the application of the exemption for bundled load as long as Service Schedule MSS-2, or some alternative arrangement for allocating transmission costs among the parties, is in effect and provides that the only revenues allocated under the agreement will be wholesale transmission service revenues (i.e., no revenues or costs associated with service to the parties' bundled retail load will be reallocated under the agreement). Additionally, nothing in this order affects the City of New Orleans' jurisdiction over Entergy New Orleans.

44. Finally, in response to Joint Customers' concern that establishing four transmission pricing zones will frustrate the previous allocation of securitized storm restoration costs, we note that, in Docket No. ER14-649-000, Entergy filed a proposed Schedule 41 to the MISO Tariff that will provide "for the recovery of the storm securitization charges consistent with settlement agreements approved by FERC in

⁵⁴ See, e.g., *Otter Tail Power Co.*, 137 FERC ¶ 61,255 (2011).

⁵⁵ *Id.* P 3.

⁵⁶ Under the MISO Tariff, certain transmission customers that are also transmission owners are exempt from the obligation to pay the license plate zonal rates under Schedule 9 of the MISO Tariff for transmission service used to serve bundled load.

⁵⁷ *Entergy Services, Inc.*, 145 FERC ¶ 61,246 (2013).

Docket Nos. ER10-984 and ER11-3274.”⁵⁸ Entergy’s commitment to maintain the previous allocation of securitized storm costs is addressed by that filing which is pending before the Commission.

3. Parallel Loop Flows

a. Rates Order

45. In the Rates Order, the Commission noted parties’ concern about the sufficiency of existing agreements that were in place to handle power flows as a result of Entergy’s integration, and also noted ongoing negotiations over potential modifications to these agreements. The Commission encouraged parties to continue to work together to resolve these issues and noted its interest in the status of those negotiations.

46. The Commission distinguished arguments relying on *Commonwealth Edison* as support for requiring Applicants to hold parties harmless from potential parallel loop flows. The Commission explained that the hold harmless remedy established in *Commonwealth Edison* for utilities in Wisconsin and Michigan was developed to mitigate the geographic separation of utilities in those two states resulting from Commonwealth Edison and American Electric Power’s decisions to join PJM. Thus, the Commission found that the hold harmless remedy was not established to address loop flow or parallel flow issues *per se*, but rather geographic separation of certain utilities from the rest of their RTO, a situation that does not exist here.

47. The Commission further noted that, at the time of the Commonwealth Edison proceeding, the present day RTOs were just forming and had not established arrangements to coordinate the flows on neighboring transmission systems. However, the Commission stated that RTOs have since developed joint operating agreements with mechanisms such as the Congestion Management Process to coordinate parallel flows. The Commission pointed out that this process is included in the MISO-SPP JOA and the MISO-PJM JOA.⁵⁹

48. Additionally, the Commission addressed arguments concerning loop flows over the SPP transmission system by noting the ongoing renegotiation of the MISO-SPP JOA

⁵⁸ Midcontinent Independent System Operator, Inc., MISO eTariff, Schedule 41, Charge to Recover Costs of Entergy Storm Securitization (§ 31.0.0).

⁵⁹ Rates Order, 143 FERC ¶ 61,257 at P 149.

as required by the Commission in the MISO-SPP JOA Order,⁶⁰ and that SPP was required to file a phase 2 MISO-SPP JOA by June 30, 2013. The Commission noted that interested parties will be free to challenge the terms of the revised MISO-SPP JOA when it is filed with the Commission and that if MISO and SPP fail to reach an agreement, they may petition the Commission for modifications to their JOA.⁶¹

b. Request for Rehearing

49. TVA, SPP and SPP Transmission Owners request rehearing of the Commission's findings regarding loop flows. TVA and SPP take issue with the Commission's finding that the hold harmless remedy in *Commonwealth Edison* does not apply in this case based on geographic considerations. TVA requests rehearing of the Commission's determination that concerns regarding loop flows should be resolved in the context of new or modified JOAs between MISO and the neighboring entities. It asserts that in reaching the conclusion that the geographical separation of certain utilities in the *Commonwealth Edison* case does not exist in this proceeding, the Commission misunderstood the factual situation presented by the Entergy integration or failed to adhere to its own precedent. TVA contends that no MISO transmission owner is located physically adjacent to Entergy, but rather, Entergy is geographically separated from the remainder of the MISO footprint. It points out that interspersed between the MISO footprint and the Entergy service area are Associated Electric Cooperative (to Entergy's north), TVA (to Entergy's east/northeast), and SPP (to Entergy's west/northwest). SPP asserts that the hold harmless protection described in *Commonwealth Edison* has never been qualified as a function of geographic separation, but rather is intended to address a wide range of financial impacts resulting from operational consequences of a utility joining or exiting an RTO, including protection against congestion uplift, locational price increases, changes in levels and/or frequency of transmission loading relief procedures, and any other significant commercial impacts that can be reasonably identified and quantified. Additionally, SPP maintains that the Commission did not explain the rationale or relevance of its geographic separation distinction. Nevertheless, SPP contends that the geography distinction the Commission attempts to draw is a distinction without a difference because Entergy and MISO are geographically separated, and this separation causes harmful flows on the SPP system.⁶² Thus, TVA and SPP maintain that the Commission's conclusion that the geographic separation situation in *Commonwealth*

⁶⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011) (MISO-SPP JOA Order), *reh'g denied*, 138 FERC ¶ 61,055 (2012).

⁶¹ Rates Order, 143 FERC ¶ 61,257 at P 150.

⁶² SPP Request for Rehearing at 15-17.

Edison does not exist here is erroneous and *Commonwealth Edison* should apply. Accordingly, TVA requests that the Commission grant rehearing and apply *Commonwealth Edison*, and direct MISO and Entergy to hold TVA and SPP harmless from any adverse effects from loop flows resulting from the integration of Entergy into the MISO footprint until a modified or new JOA is executed.⁶³

50. SPP argues that the Commission granted the requested tariff approvals without confronting the specific and well-supported challenges raised by SPP and others, and directs those parties to pursue negotiations, and as necessary, file a complaint under FPA section 206 if unsatisfied with the outcome. It contends that this result defies reasoned decision-making and stands the burden of proof requirements under FPA sections 205 and 206 on their head. Additionally, SPP argues that the Commission provided no substantive response to SPP's concerns about the proposed integration of Entergy into MISO, which SPP contends it filed in reliance on the directive in the SPP JOA Order where the Commission stated that loop flow issues would be raised and addressed in filings required to implement any decision by Entergy Arkansas to join MISO. SPP maintains that its comment identified specific adverse impacts from the Entergy-MISO integration such as uncompensated uses of SPP's transmission capacity and increased congestion on SPP's system. It asserts that the Commission presumes away these concerns by suggesting they can be resolved in ongoing JOA negotiations. However, SPP contends that parties' renegotiation of the JOA does not relieve the Commission of its FPA section 205 responsibility to examine issues going to the justness and reasonableness of the tariff changes proposed by MISO and Entergy. SPP further argues that MISO and Entergy have never obtained Commission approval of their use of SPP's transmission system to integrate all of the Entergy Operating Companies. It maintains that these concerns raise serious questions as to whether the tariff mechanisms proposed to implement the Entergy-MISO integration are just and reasonable under FPA section 205 and it is insufficient for the Commission to demur to ongoing negotiations and require MISO to submit an informational report on the status of renegotiations of the JOA.⁶⁴

51. SPP further takes issue with the Commission's statement that if SPP and MISO are unable to agree on revisions to the MISO-SPP JOA to address SPP's parallel flow concerns, then SPP may file a complaint under FPA section 206. It contends that the Commission must consider SPP's challenges as part of the Commission's FPA section 205 deliberations and that SPP should not bear the burden of proof under a new FPA section 206 complaint. SPP asserts that the Commission should grant rehearing and

⁶³ TVA Request for Rehearing at 2-3.

⁶⁴ SPP Request for Rehearing at 9-13.

initiate fact finding proceedings that will permit SPP's system use and compensation issues to be properly investigated.⁶⁵

52. SPP Transmission Owners argue that SPP has stated in pleadings before the Commission that revisions that it has filed to the MISO-SPP JOA do not address the issues in these proceedings.⁶⁶ Additionally, they contend that the status report required by the Rates Order does not address the integration issues raised, provide guidance or establish any process or procedures for the parties to follow in renegotiating the MISO-SPP JOA. SPP Transmission Owners further assert that based on the limited revisions achieved for the June 28, 2013 compliance filing, the Commission should not expect much in the November 2013 status report. However, SPP Transmission Owners state that the Commission should not wait until the filing of the November 2013 status report to confirm such concerns, but should establish settlement judge proceedings to allow interested parties to provide input to the discussions between MISO and SPP regarding modifications to the JOA. They point to the proceeding regarding the SPP Integrated Marketplace where the Commission adopted settlement judge proceedings, allowing a period of eight weeks for negotiations, suggesting that the Commission should adopt the same approach.⁶⁷ SPP Transmission Owners also assert that the Commission should clarify that the additional negotiations required to address integration issues are open to all interested parties who have expressed concerns on these issues. They contend that although the MISO-SPP JOA requires MISO and SPP to negotiate in good faith to address issues raised by either party, it does not preclude MISO or SPP from opening those discussions to other interested parties.⁶⁸ SPP Transmission Owners further argue that the issues under the JOA are complex and that the Commission cannot rely on the ability of parties to file complaints under section 206 of the FPA to address them.

53. SPP Transmission Owners further request clarification that the Commission has not made findings or resolved any issues related to parallel or loop flows, congestion management or seams issues. They point out instances in the Rates Order where the Commission noted parties' requests that MISO be required to protect neighboring transmission systems from loop flows and the Commission's response, in which the Commission noted differences in the orders relied on by those parties from the facts and

⁶⁵ *Id.* at 13-14.

⁶⁶ SPP Transmission Owners Request for Rehearing at 7-8 & n.11 (citing SPP Transmission Owners, Compliance Filing, Docket No. ER13-1864-000 (June 28, 2013)).

⁶⁷ *Id.* at 7-9.

⁶⁸ *Id.* at 10.

circumstances in the proceedings for the Rates Order and the Merger Order. SPP Transmission Owners further contend that in the Merger Order, the Commission brushed aside any issues related to the integration of Entergy into MISO by simply stating that such concerns are not due to the Entergy-ITC Transaction. They request that the Commission clarify that, in making these various statements related to integration issues, the Commission was not making any findings regarding the resolution of such issues. For example, they request that the Commission clarify that, for purposes of the parties' efforts to renegotiate the MISO-SPP JOA, the Commission has not precluded the use of a hold harmless provision or similar mechanism to protect transmission owners who will be adversely impacted by the proposed integration.⁶⁹

54. SPP Transmission Owners also seek clarification that the Commission's statement that "existing arrangements are in place that address power flows between MISO and certain neighboring regions," does not mean that the Commission finds that these existing arrangements are adequate to address increased loop flows and other dramatic changes that will result from the Entergy-ITC Transaction.⁷⁰ They maintain that MISO is not required under the existing JOA, during time periods when there is no congestion, to limit the dispatch to the flowgate allocations it receives as a result of the historical use allocation described in the congestion management process.⁷¹

55. Additionally, SPP Transmission Owners request that the Commission make clear that its references to Module F of the MISO Tariff are not intended to require that all congestion management processes must be addressed in Module F, or that the Commission was making any substantive findings regarding congestion management issues or the manner in which these issues should be treated in the renegotiated MISO-SPP JOA. They further request that the Commission clarify that parties are free to raise any issues of concern in the process of renegotiating or commenting on a revised MISO-SPP JOA, and that they would not be estopped from raising any issues due to the Commission's statements in its orders in these proceedings. SPP Transmission Owners state that even if the Commission determines not to establish formal procedures for addressing these issues, and instead relies on the ability of interested parties to protest any eventual proposed revisions to the MISO-SPP JOA, the Commission should not

⁶⁹ *Id.* at 12-13.

⁷⁰ *Id.* at 13 (quoting Rates Order, 143 FERC ¶ 61,257 at P 128).

⁷¹ *Id.*

further impede the ability of the parties to have their concerns heard by removing issues or proposed solutions from consideration at this stage.⁷²

c. MISO Informational Report

56. MISO explains that it continues to discuss loop flow compensation with SPP, and MISO has indicated that it is open to a loop flow compensation mechanism that is equitable and reciprocal. MISO states that SPP has provided a specific proposal for review and the two parties have a meeting scheduled in the near future to discuss SPP's proposal. According to MISO, one of the objections that SPP has expressed regarding the current market-to-non market process, and the proposed market-to-market process, is that SPP disagrees with MISO's calculation of market flows. MISO states that, after several months of discussion in joint stakeholder meetings, MISO has agreed to modify its market flow calculation methodology and, as a result, MISO and SPP plan to file additional revisions to the MISO-SPP JOA to change the calculation methodology by the first quarter of 2014.⁷³

57. MISO also explains that it has met with SPP stakeholders several times this year to discuss JOA related matters, such as: market flow calculation methodology; contract path capacity sharing; joint coordinated system planning; Congestion Management Process freeze date replacement; and network resource interconnection service. MISO further explains that the two RTOs have used the joint stakeholder process to identify initiatives that will reduce the operational and financial impacts of the seam, consistent with similar Joint and Common Market initiatives previously studied by PJM and MISO in their Joint and Common Market process. MISO notes that these meetings will continue beyond the Entergy integration and the implementation of the SPP Integrated Marketplace, as long as the RTOs and stakeholders believe there are feasible initiatives worth exploring.⁷⁴

58. MISO adds that it negotiated the Operations Reliability Coordination Agreement (ORCA) with certain neighboring utilities and/or transmission providers, including, among others, SPP, TVA, and Associated Electric Cooperative. MISO states that the purpose of the ORCA is to allow for a reasonable transition period to address concerns raised in connection with the consideration of MISO's revised Reliability Plan by the NERC Operating Committee. According to MISO, under the ORCA, MISO will take

⁷² *Id.* at 14.

⁷³ MISO Informational Report at 4.

⁷⁴ *Id.* at 5.

certain actions to limit or control its dispatch based on agreed upon operating limits without reaching the System Operating Limits on the transmission systems of any of the parties in real-time for the duration of a certain defined Operations Transition Period, which will consist of three different phases and will be in effect until April 1, 2015. MISO finally notes that the ORCA provides that the parties to the ORCA will endeavor to develop an Operations Coordination Process that will be used in new agreements between MISO and each of the Joint Parties, other than SPP, when the Operations Transition Period terminates.⁷⁵

d. SPP Protest of Informational Report

59. SPP states, in response, that its negotiations with MISO have resulted in some progress in addressing a single, long-standing concern about the calculation of “market flows” across the MISO-SPP seam, which has adversely affected the existing congestion management process under the JOA. SPP further states that this matter has been the subject of a long-standing, formal dispute resolution under the JOA, and it has not formally been the subject of any Commission proceedings while that dispute resolution proceeded.⁷⁶

60. SPP notes that, as MISO indicates, SPP and MISO have reached an agreement in principle that would modify the methodology for calculating market flows under the JOA, thereby resolving that dispute resolution matter. However, SPP clarifies, a final, formal resolution has not yet been reached and necessary revisions to the SPP-MISO JOA have not been filed with the Commission.⁷⁷

61. SPP explains that of significance is the Informational Report’s confirmation that negotiations have not been successful in reaching agreement on other significant outstanding JOA issues. SPP states that the major gap continues to be the absence of any resolution of JOA revisions to address SPP’s concerns about the intentional, unscheduled use of, and compensation for the use of, the SPP transmission system. Thus, SPP argues that, despite MISO’s representation that MISO and SPP continue to discuss an appropriate mechanism to compensate for loop flows, the failure of the parties to yet reach agreement demonstrates that the Commission-ordered negotiations are not an adequate substitute for formal fact-finding proceedings. To the contrary, SPP notes, with

⁷⁵ *Id.*

⁷⁶ SPP Protest of Informational Report at 3.

⁷⁷ *Id.* at 4.

the use and compensation issues unresolved, the Commission cannot properly determine that the pending tariff revisions filed in this docket are just and reasonable.⁷⁸

62. Indeed, according to SPP, MISO's continued characterization of the power flows crossing SPP's system as "loop flows" demonstrates a fundamental disconnect in how the parties view the dispute. SPP explains that loop flows are normally understood as parallel path flows occurring on adjacent systems when the party causing the flows is operating within its contract path limit. SPP, however, states that it has never contested, or sought compensation for, "loop flows," as conventionally understood. Rather, SPP continues, the compensation claims asserted by SPP concern the significant unscheduled, intentional power flows that will cross the SPP system when, post-integration, MISO's dispatch exceeds the 1000 MW of direct contract path capacity that currently exists between MISO and Entergy. Notably, the Commission has never addressed whether MISO may exceed this 1000 MW limitation, leaving the matter to negotiation, which, thus far, has failed.⁷⁹

63. SPP states that it does not believe that there is any reasonable prospect for resolution in these private negotiations. SPP notes that, over the course of the parties' negotiations, SPP has submitted at least three separate proposals to revise the JOA. According to SPP, to date, it has not received any MISO proposal, despite the Commission's admonition that renegotiation of the JOA is necessary. In fact, the JOA itself imposes an obligation on the parties to renegotiate following changes in a party's system configuration. SPP argues that the Commission can bring order to the unsettled state of affairs by granting rehearing of the Rates Order and establishing hearing and settlement judge proceedings pursuant to sections 205 and 206 of the FPA to examine the economic and operational issues caused by the unauthorized, intentional, unscheduled incremental power flows that will be placed on SPP's system when MISO is dispatching its market to reach the remote load of its new member, Entergy. SPP argues that if the Commission allows the Entergy integration to proceed, it should establish a refund effective date concerning the use and compensation issues that SPP has raised as of December 19, 2013, the scheduled date for the Entergy integration. That is, according to SPP, the only permissible response given the serious questions raised by SPP regarding the tariff mechanisms proposed by the parties to implement the Entergy-MISO integration.⁸⁰

⁷⁸ *Id.*

⁷⁹ *Id.* at 5.

⁸⁰ *Id.* at 6.

e. **Commission Determination**

64. We deny rehearing of the Rates Order's findings regarding loop flow issues. Although SPP requests that the Commission establish hearing and settlement judge procedures in this proceeding, we find that doing so is inappropriate; this case is not the proper forum in which to address these concerns. While we remain interested in the timely resolution of these issues and are concerned about MISO and SPP's inability to resolve these issues, we will not institute a new proceeding under section 206 to address these issues. These issues are now currently before the Commission in other pending proceedings. Specifically, on December 3, 2013, the U.S. Court of Appeals for the District of Columbia Circuit vacated and remanded the Commission's orders interpreting existing provisions of the MISO-SPP JOA that the Commission had interpreted to allow MISO to use available transmission capacity on the SPP transmission system to serve Entergy Arkansas should Entergy Arkansas join MISO.⁸¹ The remand proceeding is pending in Docket No. EL11-34-002. Also, on January 28, 2014, SPP filed an unexecuted non-firm point-to-point transmission service agreement under FPA section 205 and a related complaint under FPA section 206, in which SPP seeks compensation from MISO for certain uses of the SPP transmission system by MISO to flow power between MISO's northern and southern regions beginning December 19, 2013.⁸² Additionally, on February 18, 2014, MISO filed a complaint under FPA section 206, requesting that the Commission direct SPP to cease issuing invoices to MISO for transmission service and unreserved use penalties and nullify the invoices that SPP has issued to-date.⁸³

65. We deny rehearing with respect to the hold harmless request. SPP and TVA take issue with the Commission's characterization that the hold harmless protection required in *Commonwealth Edison* was due to geographic separation. While the parties debate whether Entergy is geographically separated from the rest of MISO or not, AEP and Commonwealth Edison created a void in MISO, separating Wisconsin and Michigan

⁸¹ *Southwest Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013).

⁸² See *Southwest Power Pool, Inc., Unexecuted Non-Firm Point-to-Point Transmission Service Agreement*, Docket No. ER14-1174-000 (filed Jan. 28, 2014); and *Southwest Power Pool, Inc. v. Midcontinent Indep. Sys. Operator, Inc., Complaint and Request for Fast Track Processing and Motion to Consolidate*, Docket No. EL14-21-000 (filed Jan. 28, 2014).

⁸³ *Midcontinent Independent System Operator, Inc. v. Southwest Power Pool, Inc., Complaint and Motion to Consolidate*, Docket No. EL14-30-000 (filed Feb. 18, 2014).

utilities from the remainder of their RTO. We note that Entergy's integration, however, does not create a similar void within the SPP footprint. Therefore, the circumstances surrounding Entergy's integration are distinct from the circumstances surrounding AEP and Commonwealth Edison's integrations into PJM. In any event, the hold harmless condition imposed by the Commission was intended to be a short-lived solution and not a long-term solution to managing the MISO-PJM seam.⁸⁴ The long-term solution was, and is, the MISO-PJM JOA, which evolved in time and is the foundation for the Joint and Common Market initiative between the two RTOs.⁸⁵ As recognized in the Rates Order, pursuant to the MISO-SPP JOA's own terms and the requirements of the MISO-SPP-JOA Order, MISO and SPP are required to renegotiate, in good faith, a revised JOA that efficiently and fairly manages the MISO-SPP seam as a result of changes in their footprints. However, as discussed above, such negotiations have failed to date to resolve these issues, and these issues are currently pending in formal proceedings before the Commission for resolution. Our decision on the hold harmless request here is without prejudice to issues in those other pending proceedings.

4. Regional Through-and-out Rate (RTOR) Issues

a. Rates Order

66. The Commission denied requests that the Commission confirm that ITC Holdings and MISO will apply the Entergy transmission plan for Multi-Value Project (MVP) and non-MVP network upgrade costs to the transmission rates of all Entergy customers, including point-to-point customers.⁸⁶ The Commission also found that any request to receive similar treatment as that provided in the Entergy Cost Allocation proceeding⁸⁷

⁸⁴ See *Alliance Companies*, 103 FERC ¶ 61,274, at PP 41, 44 (2003) (clarifying that the hold harmless condition applied only during the interim period prior to the commencement of the Joint and Common Market).

⁸⁵ We note that, as part of SPP's application to become an RTO, and in addition to requiring SPP to have a seams agreement on file with MISO, the Commission accepted SPP's commitment to participate in the Joint and Common Market with MISO and PJM. See *Southwest Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 63 (2004).

⁸⁶ Rates Order, 143 FERC ¶ 61,257 at P 171.

⁸⁷ The Entergy Cost Allocation proceeding is the proceeding in Docket No. ER12-480-000 in which MISO and the MISO Transmission Owners proposed amendments to the MISO Tariff to provide for a five-year transition period for the integration of Entergy into the MISO transmission planning and cost allocation process. The proposed tariff amendments were conditionally accepted by the Commission on April 19, 2012.

(continued...)

was beyond the scope of the instant proceeding. Additionally, the Commission found that Associated Electric Cooperative was being treated comparably to similarly situated customers who were requesting drive-through service on MISO's transmission system, because any other customers seeking drive-through service across Entergy's transmission system would be charged the same rate that Associated Electric Cooperative would be charged.⁸⁸

b. Request for Rehearing

67. The Kansas-Missouri Companies and Associated Electric Cooperative seek rehearing of the Commission's determination on the MISO RTOR and the fact that this issue was not set for hearing and settlement judge procedures. The Kansas-Missouri Companies assert that the MISO RTOR does not reflect the costs of the Entergy system and, accordingly, the application of the MISO RTOR to existing transactions through or out of Entergy is contrary to the long-established ratemaking principle that customers should pay rates designed to recover the costs of the facilities used to provide the service.⁸⁹ The Kansas-Missouri Companies note that, by applying the MISO RTOR to GMO's existing long-term service, GMO's rates for the same service over the same facilities will increase by 75 percent.⁹⁰ To remedy this, the Kansas-Missouri Companies state that, in their initial protests, they requested that the Commission grandfather the existing transmission service contracts at the existing rates.⁹¹ They add that this could also be achieved by creating a separate RTOR for the Entergy region based on the costs of Entergy's facilities.⁹²

68. The Kansas-Missouri Companies also note that the Commission has previously recognized inefficiencies created by the RTOR and required that the MISO RTOR not be

Midwest Indep. Transmission Sys. Operator, Inc., 139 FERC ¶ 61,056, *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012).

⁸⁸ Rates Order, 143 FERC ¶ 61,257 at P 171.

⁸⁹ Kansas-Missouri Companies Request for Rehearing at 2.

⁹⁰ *Id.*

⁹¹ *Id.* at 3.

⁹² *Id.*

applied to transactions into PJM.⁹³ The Kansas-Missouri Companies state that the Commission concluded that “the RTORs in the MISO/PJM region perpetuate seams that prevent the realization of more efficient and competitive electricity markets in the region and thus violate a central tenet of the Commission’s RTO policy.”⁹⁴ The Kansas-Missouri Companies argue that the MISO RTOR is not reflective of the costs of the Entergy system, and there is no rate pancaking being eliminated within MISO South to justify the application of the high MISO RTOR to the Entergy region.⁹⁵

69. Arkansas Electric Cooperative notes that it currently operates under a Power Coordination, Interchange and Transmission Service Agreement (PCITSA) with Entergy Arkansas.⁹⁶ Arkansas Electric Cooperative states that the PCITSA’s transmission service provisions obligate Entergy Arkansas to deliver Arkansas Electric Cooperative’s member cooperatives’ power and energy requirements at specified delivery points throughout the Entergy Arkansas system and, importantly, to deliver power and energy scheduled to adjacent systems on a firm basis.⁹⁷ Arkansas Electric Cooperative further states that it and Entergy Arkansas agreed to terminate the PCITSA upon Entergy’s integration into MISO and convert the transmission service previously provided under the PCITSA to open access transmission service under the applicable tariffs of Entergy Arkansas and MISO.⁹⁸ Arkansas Electric Cooperative explains that the rate issue here concerns the transmission service where Entergy Arkansas delivers power and energy scheduled by Arkansas Electric Cooperative, on a firm basis to other member cooperatives on adjacent

⁹³ Kansas-Missouri Companies Request for Rehearing at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105, at P 39 (2003), *order on reh’g*, 105 FERC ¶ 61,212 (2003), *order on clarification*, 105 FERC ¶ 61,288 (2003), *reh’g denied*, 131 FERC ¶ 61,174 (2010) (MISO RTOR Order)).

⁹⁴ *Id.* at 6 (citing MISO RTOR Order, 104 FERC ¶ 61,105 at P 28).

⁹⁵ *Id.* at 6-7.

⁹⁶ Arkansas Electric Cooperative Request for Rehearing at 3.

⁹⁷ *Id.* at 4.

⁹⁸ *Id.* at 5 (citing The Independence Steam Electric Station and White Bluff Steam Electric Station Marketing Agreement between Entergy Arkansas, Arkansas Electric Cooperative, and others, filed by Entergy Arkansas in Docket No. ER12-2411 on August 6, 2012, accepted by letter order on Sept. 27, 2012, providing that the “PCITSA shall terminate upon commencement of the Participation Period,” which is defined as the “entry into the MISO Market.”).

systems.⁹⁹ Arkansas Electric Cooperative further explains that this firm transmission service is of critical importance, because it uses the service to deliver power and energy from Arkansas Electric Cooperative generation resources on the Entergy Arkansas system to member cooperatives' delivery points in the adjacent SPP region.¹⁰⁰ Arkansas Electric Cooperative asserts that the cost for this service will increase from \$1.50 per kW-month under the PCITSA to about \$2.50 per kW-month under the MISO Tariff.¹⁰¹

70. Arkansas Electric Cooperative states that the Commission has imposed conditions on its acceptance of RTO proposals to ensure that the RTO has an adequate scope and configuration that, among other things, encompasses one contiguous area and recognizes trading patterns.¹⁰² According to Arkansas Electric Cooperative, the Commission concluded that "the RTORs in the Midwest ISO/PJM region perpetuate seams that prevent the realization of more efficient and competitive electricity markets in the region, and thus violate a central tenet of the Commission's RTO policy."¹⁰³ Arkansas Electric Cooperative asserts that the circumstances here are similar—but the issue is not whether the MISO RTOR should be eliminated, but rather, whether the RTOR for service through or out of the Entergy transmission system reflects the cost of the Entergy facilities used to provide service, as required by established ratemaking principles.¹⁰⁴ Arkansas Electric Cooperative explains that the MISO RTOR was designed to recover revenues lost when internal rate pancakes within MISO were eliminated a decade ago.¹⁰⁵ Arkansas Electric Cooperative asserts that the existing RTOR does not reflect the costs of the Entergy system and there is no pancake being eliminated within MISO South to justify the

⁹⁹ *Id.* at 5-6.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 6.

¹⁰² *Id.* at 7 (citing MISO RTOR Order, 104 FERC ¶ 61,105 at P 29).

¹⁰³ *Id.* at 7-8 (citing MISO RTOR Order, 104 FERC ¶ 61,105 at P 28).

¹⁰⁴ *Id.* at 8 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009) ("rates [must] reflect to some degree the costs actually caused by the customer who must pay them"); *Penn. Elec. Co. v. FERC*, 11 F.3d 207, 211 (D.C. Cir. 1993) ("customers should normally be charged rates that fairly track the costs for which they are responsible"); *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1303 (D.C. Cir. 1992) (same)).

¹⁰⁵ *Id.* (citing *Alliance Companies*, 103 FERC ¶ 61,274 at P 39).

application of the high RTOR to the Entergy region.¹⁰⁶ Arkansas Electric Cooperative further asserts that neither the Merger Order nor the Rates Order addresses this issue, which was raised by parties like the SPP Transmission Owners, and neither order imposes appropriate conditions on the application of the RTOR to MISO South.

71. Arkansas Electric Cooperative states that the Merger Order and Rates Order do not address arguments raised by GMO regarding the significant rate impact that the MISO RTOR will have on GMO and similarly situated Entergy transmission customers, including a request to hold GMO harmless from Entergy's decision to join MISO. Arkansas Electric Cooperative states that the RTOR issues were not acknowledged, addressed, or resolved, and should be included in the issues set for hearing and settlement judge procedures.¹⁰⁷

72. Associated Electric Cooperative argues that the Commission erred in concluding that Associated Electric Cooperative's point-to-point transmission rate increase is "being addressed currently in the Entergy Cost Allocation Proceeding" because that proceeding only concerns network upgrade costs between MISO and Entergy and does not concern baseline rates under Schedule 7 of the MISO Tariff. Associated Electric Cooperative also explains that the Commission's orders in the Entergy Cost Allocation proceeding were limited to addressing network upgrade costs and did not address baseline rates of drive-through customers, such as Associated Electric Cooperative. Associated Electric Cooperative states that drive-through customers will be subject to cross-subsidization in a way that no other transmission customer of MISO will be and the only cause of Associated Electric Cooperative's 87 percent rate increase is the integration of Entergy's transmission assets into MISO. Associated Electric Cooperative asserts that the Commission cannot simply sidestep this issue by erroneously asserting that the issue is being addressed in another proceeding, especially when the issue has not even been raised in that other proceeding.¹⁰⁸

73. Associated Electric Cooperative argues that the cost for its point-to-point transmission service will increase by \$3.1 million dollars per year, which is an increase of 87 percent over the cost that Associated Electric Cooperative currently pays to Entergy.¹⁰⁹ Associated Electric Cooperative asserts that it will not utilize any facilities in

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 9-10.

¹⁰⁸ Associated Electric Cooperative Request for Rehearing at 6-9.

¹⁰⁹ *Id.* at 9.

the pre-Transaction MISO footprint and thus it will not receive any benefits as a result of the Transaction that justify this substantial rate increase.¹¹⁰

74. Associated Electric Cooperative explains that all other legacy customers besides drive-through customers will be charged a zonal rate based on the facilities in their specific zone.¹¹¹ Associated Electric Cooperative then argues that the only legacy customers that will be forced to pay rates based on both the MISO and Entergy footprints immediately after the integration will be customers, like Associated Electric Cooperative, that take service under Schedule 7 of the MISO Tariff.¹¹² Associated Electric Cooperative asserts that ignoring such a rate increase on only drive-through customers violates the Commission's cost causation policy.¹¹³ Therefore, Associated Electric Cooperative argues that the Commission should have set this case for hearing and settlement procedures.¹¹⁴

c. Commission Determination

75. Upon further consideration, we find that MISO's proposed RTOR for service over the transmission system in the MISO South region raises issues of material fact that cannot be resolved based on the record before us, and therefore we grant rehearing and will institute hearing and settlement judge procedures to address these issues. We find, based on parties' arguments on rehearing that the proposed RTOR for service over the transmission system in the MISO South region has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful. Therefore, we will grant rehearing to provide a forum for parties to address the issues raised regarding MISO's proposed RTOR.

76. Because the Commission accepted MISO's proposed RTOR for service over the transmission system in the MISO South region in the Rates Order without suspension or setting it for hearing, we will institute a section 206 proceeding, in Docket No. EL14-19-000, with a refund effective date. In addition, because this investigation will involve issues of material fact, we will set the matter for a trial-type evidentiary hearing. Given

¹¹⁰ *Id.* at 10.

¹¹¹ *Id.* at 11.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ *Id.* at 14.

the common issues of fact and law, we consolidate Docket No. EL14-19-000 with the ongoing proceedings in Docket No. ER13-948-000 for purposes of settlement, hearing and decision.

77. In cases where, as here, the Commission institutes a section 206 proceeding on its own motion, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date of the publication by the Commission of notice of the initiation of the Commission's proceeding in the *Federal Register*, and no later than five months after the publication date. In order to give maximum protection to customers, and consistent with our precedent,¹¹⁵ we will establish a refund effective date at the earliest date allowed. This date will be the date on which notice of the initiation of the proceeding in Docket No. EL14-19-000 is published in the *Federal Register*.

78. In addition, section 206(b) requires that, if no final decision has been rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Given the nature and complexity of the matters to be resolved, we expect that, assuming the case does not settle, the presiding judge should be able to render a decision within nine months of the commencement of hearing procedures, or if the case were to go to hearing immediately, by October 31, 2014. If the presiding judge is able to render a decision by that date, and assuming the case does not settle, we estimate that we will be able to issue our decision within approximately six months of the filing of briefs on and opposing exceptions or by June 30, 2015.

79. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding; otherwise, the Chief Judge will select a judge for this purpose.¹¹⁷ The settlement judge

¹¹⁵ See, e.g., *Canal Electric Co.*, 46 FERC ¶ 61,153, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

¹¹⁶ 18 C.F.R. § 385.603 (2013).

¹¹⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five (5) days of this order. The Commission's website contains a list of Commission judges available for

(continued...)

shall report to the Chief Judge and the Commission within 30 days of the date of this order concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) The motions to withdraw the filings and terminate the proceedings in Docket Nos. ER12-2681-000, ER12-2681-002, ER13-782-000, ER12-2682-000, ER12-2682-001, and ER12-2682-002, are hereby granted, as discussed in the body of this order.

(B) The requests for rehearing in Docket Nos. ER12-2681-001, ER13-782-001, and ER12-2683-001 are hereby dismissed as moot, as discussed in the body of this order.

(C) The requests for rehearing filed in Docket No. ER13-948-001 are hereby granted in part and denied in part, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R., Chapter I), the Commission hereby institutes a proceeding in Docket No. EL14-19-000, as discussed in the body of this order. However, the investigation and hearing shall be held in abeyance to provide time for settlement judge procedures as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2013), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within fifteen (15) days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates a settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five (5) days of the date of this order.

(F) Within thirty (30) days of the date of this order, the settlement judge shall file a report with the Commission and the Chief Judge on the status of settlement

settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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

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

(H) The Secretary shall promptly publish in the *Federal Register* a notice of the Commission's initiation of the investigation ordered in Ordering Paragraph (E) above, under section 206 of the FPA.

(I) The refund effective date established pursuant to section 206(b) of the FPA will be the date of publication in the *Federal Register* of the notice discussed in Ordering paragraph (H) above.

(J) Docket Nos. EL4-19-000 and ER13-948-000 are hereby consolidated for the purpose of settlement, hearing, and decision, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.