

149 FERC ¶ 61,248
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Northern Indiana Public Service Company

v.

Docket No. EL13-88-000

Midcontinent Independent System Operator, Inc. and
PJM Interconnection, L.L.C.

ORDER ON COMPLAINT AND ESTABLISHING TECHNICAL CONFERENCE

(Issued December 18, 2014)

1. On September 11, 2013, Northern Indiana Public Service Company (NIPSCO) filed a complaint pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure² against Midcontinent Independent System Operator, Inc. (MISO) and PJM Interconnection, L.L.C. (PJM) (Complaint). NIPSCO requests that the Commission order MISO and PJM to reform the interregional planning process of the Joint Operating Agreement between MISO and PJM (MISO-PJM JOA).³ On December 19, 2013, the Commission issued an order holding the Complaint in abeyance pending further Commission action in other proceedings.⁴ In this order, we direct Commission staff to convene a technical

¹ 16 U.S.C. §§ 824e, 825e, 825h (2012).

² 18 C.F.R. § 385.206 (2014).

³ The existing MISO-PJM JOA was executed December 31, 2003 and accepted by the Commission in an order issued on March 19, 2004. *See Midwest Indep. Transmission Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251, at PP 56-57 (2004) (JOA Order). Unless defined herein, capitalized terms have the meaning given to them in the MISO-PJM JOA.

⁴ *Northern Indiana Public Service Co. v. Midcontinent Indep. Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 145 FERC ¶ 61,256, at P 21 (2013) (December 19 Order).

conference to explore issues raised in the Complaint related to the MISO-PJM JOA and the MISO-PJM seam. Further, we establish a refund effective date of September 11, 2013.

I. Background

2. NIPSCO is a vertically-integrated Indiana corporation engaged in the generation, transmission and distribution of energy at the wholesale and retail levels. NIPSCO is an electric load-serving entity and a transmission owning member of MISO.⁵

3. Both MISO and PJM are Commission-approved regional transmission organizations (RTO) and signatories to the MISO-PJM JOA.⁶ Article IX of the MISO-PJM JOA contains provisions for coordinated transmission planning between MISO and PJM, including the joint preparation with stakeholder input, on a regular basis, of an inter-RTO transmission plan known as the Coordinated System Plan.⁷ Article IX also provides criteria for the designation of Cross-Border Baseline Reliability Projects⁸ and Cross-Border Market Efficiency Projects.⁹

⁵ Complaint at 12.

⁶ *Id.* at 13.

⁷ MISO-PJM JOA at §§ 9.1.1.1 & 9.1.2.

⁸ Under the currently-effective MISO-PJM JOA, a transmission project that meets all of the following criteria will be designated as Cross-Border Baseline Reliability Projects: (i) by agreement of the Joint RTO Planning Committee, the project is needed to efficiently meet applicable reliability criteria; (ii) the project must be a baseline reliability project as defined under the MISO or PJM Tariffs; (iii) result in an allocation of project cost to the RTO in which the project is not constructed (i.e., the cross-border RTO) of at least \$10,000,000; (iv) involve the cross-border RTO's contribution of at least five percent of the total loading on the constrained facility, as determined based on the Coordinated System Plan power flow model; and (v) have an in-service date after December 31, 2007. *Id.* § 9.4.3.1.1.

⁹ Under the currently-effective MISO-PJM JOA, a transmission project that meets all of the following criteria will be designated as Cross-Border Market Efficiency Projects: (i) has an estimated Project Cost of \$20,000,000 or greater; (ii) is evaluated as part of a Coordinated System Plan or joint study process, as described in section 9.3.5 of the MISO-PJM JOA; (iii) meets the threshold benefit to cost ratio as prescribed under the terms of, and using the benefit and cost measures prescribed in the MISO-PJM JOA; (iv) qualifies as an economic transmission enhancement or expansion under the terms of

(continued...)

4. On July 10, 2013, MISO (Docket No. ER13-1943-000) and PJM (Docket No. ER13-1944-000) submitted proposed changes to the MISO-PJM JOA to comply with the interregional transmission coordination requirements of Order No. 1000.¹⁰ Also on July 10, 2013, MISO submitted proposed changes to its Open Access Transmission, Energy, and Operating Reserve Markets Tariff (MISO Tariff) to, among other things, state that its interregional transmission coordination and cost allocation provisions with PJM are outlined in the MISO-PJM JOA (Docket No. ER13-1945-000). In addition, on July 10, 2013, PJM Transmission Owners¹¹ submitted a filing to demonstrate that the MISO-PJM JOA complies with the interregional cost allocation requirements of Order No. 1000 (Docket No. ER13-1924-000). We address the Order No. 1000 interregional

the PJM Regional Transmission Expansion Plan (RTEP) and also qualifies as a Regionally Beneficial Project under the terms of Attachment FF of the MISO Tariff (including all applicable threshold criteria), provided that any minimum Project Cost threshold required to qualify a project under either the PJM RTEP or MISO Tariff shall apply to the Project Cost of the Cross Border Market Efficiency Projects and not the allocated cost; and (v) addresses one or more constraints for which at least one dispatchable generator in the adjacent market has a generator to load distribution factor of five percent or greater with respect to serving load in that adjacent market, as determined using the Coordinated System Plan power flow model. *Id.* § 9.4.3.1.2.

¹⁰ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

¹¹ PJM Transmission Owners are: Allegheny Power; American Electric Power Service Corporation; Exelon Corporation; Dayton Power and Light Company; Virginia Electric and Power Company (Dominion Virginia Power); Public Service Electric and Gas Company; PPL Electric Utilities Corporation; Baltimore Gas and Electric Company; Jersey Central Power & Light Company; Metropolitan Edison Company; Pennsylvania Electric Company; Potomac Electric Power Company; Atlantic City Electric Company; Delmarva Power & Light Company; UGI Utilities, Inc.; Allegheny Electric Cooperative, Inc.; CED Rock Springs, LLC; Old Dominion Electric Cooperative (Old Dominion); Rockland Electric Company; Duquesne Electric Company; Neptune Regional Transmission System, LLC; Trans-Allegheny Interstate Line Company; Linden VFT LLC; American Transmission Systems Incorporated; City of Cleveland Department of Public Utilities (Division of Cleveland Public Power); Duke Energy Ohio Inc.; Duke Energy Kentucky Inc.; City of Hamilton, Ohio; Hudson Transmission Partners LLC; and East Kentucky Power Cooperative Inc.

compliance filings made in Docket Nos. ER13-1943-000, ER13-1944-000, ER13-1945-000, and ER13-1924-000 in an order issued concurrently with this order.¹²

II. Complaint

5. NIPSCO states that it has filed the Complaint to remedy flaws in the interregional transmission planning provisions of the MISO-PJM JOA. NIPSCO also argues that the Order No. 1000 interregional compliance filings by MISO and PJM do not comply with Order No. 1000. Finally, NIPSCO argues that assuming, *arguendo*, that MISO and PJM have complied with Order No. 1000, given the specific orders approving the MISO-PJM seam in particular, and the specific facts and circumstances surrounding the state of affairs along the MISO-PJM seam, the Commission should take action to ensure that customers' rates remain just and reasonable.¹³

6. NIPSCO states that elements of its proposed reforms to the MISO-PJM JOA process may arguably be considered within the scope of MISO's and PJM's Order No. 1000 interregional compliance filings, while other elements may be outside the mandates of Order No. 1000. NIPSCO states that it understands the Commission's rules of procedure do not permit parties to seek changes in compliance filings that go beyond the scope of the initial order. Thus, to ensure its proposals are addressed on the merits and not dismissed for want of proper procedures and in order to present a comprehensive solution, NIPSCO is filing this Complaint in conjunction with its protest of the MISO and PJM Order No. 1000 interregional compliance filings.¹⁴ NIPSCO states that it would not be opposed to consolidation of the Complaint with the Order No. 1000 interregional compliance filings made by MISO and PJM.¹⁵

7. Among other issues NIPSCO raises with the provisions for coordinated transmission planning between MISO and PJM, NIPSCO argues that, to date, no cross-border transmission upgrade project has been approved under the MISO-PJM JOA. NIPSCO argues that, given the highly-interconnected and highly utilized nature of the MISO-PJM seam along a highly populated and industrialized part of the country, this

¹² See *PJM Interconnection, L.L.C.*, 149 FERC ¶ 61,250 (2014) (MISO-PJM Interregional Compliance Order).

¹³ Complaint at 4.

¹⁴ *Id.* at 2. NIPSCO submitted its protest to MISO's and PJM's Order No. 1000 interregional compliance filings in Docket Nos. ER13-1924-000, ER13-1943-000, ER13-1944-000, and ER13-1945-000. The Complaint and protest are essentially identical.

¹⁵ *Id.* at 58.

circumstance demonstrates that the transmission planning process the RTOs rely on to meet their interregional transmission planning responsibilities is unreasonably flawed. NIPSCO also asserts that there have been substantial and significant congestion costs and operating issues along the MISO-PJM seam and on the NIPSCO interface in particular. NIPSCO notes that the 2012 MISO State of the Market Report identifies that congestion on MISO market-to-market constraints¹⁶ totaled \$367 million for 2012 and congestion for 2011 was even 20 percent higher.¹⁷ NIPSCO states that one clear example of where operations and planning become intertwined is the use of market-to-market redispatch to reallocate short-term transmission capacity. NIPSCO argues that many of the top congested flowgates are along the MISO-PJM seam. NIPSCO submits that, while the use of market-to-market redispatch and associated payments for day-to-day operations makes sense, the deeper problem is that the system has been leaned on as a solution to interregional constraints rather than building long-term solutions to long-standing congested flowgates.

8. Specifically, with respect to transmission planning cycles, NIPSCO contends that the MISO-PJM JOA does not stipulate any specific start or end date, leaving the joint process open-ended, and as a result, leading to delays in the interregional transmission planning process.¹⁸ NIPSCO also contends that a Cross-Border Market Efficiency Project must navigate three separate and significantly different processes and their applicable criteria: (1) the MISO Transmission Expansion Plan (MTEP) regional process and criteria; (2) the PJM Regional Transmission Expansion Plan (RTEP) process and criteria; and (3) the joint cross border interregional process and criteria as specified in the MISO-PJM JOA. NIPSCO argues that no transmission project has ever been studied in all three processes let alone passed all three sets of criteria.¹⁹ NIPSCO further argues that, while the current MISO-PJM market-to-market redispatch methodology provides an efficient and effective method of reallocating transmission capacity in the short term to

¹⁶ NIPSCO states that market-to-market payments represent actual congestion management payments that are made from one RTO to another to free up transmission capacity that the “home” RTO is using. This reallocation is performed so the other RTO can benefit from the capacity that the home RTO makes available through redispatch. *Id.* at 9.

¹⁷ *Id.* at 23 (citing Independent Market Monitor for MISO, *2012 State of the Market Report* 52 (June 2013), available at https://www.potomaceconomics.com/uploads/reports/2012_SOM_Report_final_6-10-13.pdf).

¹⁸ *Id.* at 36-37.

¹⁹ *Id.* at 43-44.

provide interregional congestion relief, the MISO-PJM JOA does not consider avoided market-to-market payments as a benefit justifying cross border allocation of transmission costs. NIPSCO contends that this has the potential for producing uneconomic results to the detriment of customers.²⁰ NIPSCO also argues that the MISO-PJM JOA acts as a roadblock in preventing needed transmission projects from being built. In addition, NIPSCO argues that the consequences of not having an established process for evaluating and allocating smaller cost/voltage upgrades lead to substantial inefficiencies and potential operational issues.²¹

9. NIPSCO submits that MISO's and PJM's Order No. 1000 interregional compliance filings will not change this state of affairs. Thus, NIPSCO submits that, to make the MISO-PJM JOA interregional transmission planning provisions just and reasonable, the Commission should order MISO and PJM to implement six reforms through revisions to the MISO-PJM JOA.

10. First, NIPSCO states that the MISO-PJM cross-border planning process should run concurrently with the MTEP and the RTEP processes rather than after those regional transmission planning cycles, and NIPSCO proposes a schedule for doing so.²²

11. Second, NIPSCO states that there should be consistency between the MISO and PJM planning analysis.²³ Specifically, NIPSCO states that the Commission should require MISO and PJM to develop and use one common single combined MTEP/RTEP with common load, generator dispatch, and other core assumptions for use in the cross-border transmission planning process.²⁴

12. Third, NIPSCO states that the Commission should require MISO and PJM to develop and jointly agree upon a single common set of criteria for the approval of Cross-Border Market Efficiency Projects.²⁵

13. Fourth, NIPSCO states that the Commission should require MISO and PJM to amend the criteria for approval of a Cross-Border Market Efficiency Project so that it

²⁰ *Id.* at 46-47.

²¹ *Id.* at 48.

²² *Id.* at 6-7 & Attachment A.

²³ *Id.* at 7-8.

²⁴ *Id.* at 42.

²⁵ *Id.* at 8-9, 43-46.

addresses all known benefits including, more specifically, avoidance of future market-to-market payments made to reallocate short-term transmission capacity in the real-time operation of the system.²⁶

14. Fifth, NIPSCO states that the Commission should require MISO and PJM to have a process for joint planning and cost allocation of lower voltage and lower cost transmission upgrades.²⁷

15. Sixth, NIPSCO states that MISO and PJM must improve the processes within the MISO-PJM JOA with respect to new generator interconnections and generation retirements.²⁸

III. Answers and Comments to the Complaint²⁹

A. MISO's Answer to Complaint

16. MISO contends that the Complaint is invalid for a variety of reasons and should be dismissed. MISO notes that the Order No. 1000 interregional compliance filings are still pending and, thus, the Complaint's claims of non-compliance are beyond the scope of a section 206 filing.³⁰ MISO argues that section 206 filings must address a final rate, and since the MISO-PJM JOA revisions are still pending before the Commission, they are not a valid subject of a section 206 filing. MISO also contends that NIPSCO has not experienced any actual harm due to the proposed MISO-PJM JOA revisions, which is

²⁶ *Id.* at 9-10, 46-48.

²⁷ *Id.* at 10, 48-50.

²⁸ *Id.* at 11, 50-55.

²⁹ While the answers and comments to the Complaint were summarized in the December 19 Order, we largely repeat those summaries here for ease of reference. *See* December 19 Order, 145 FERC ¶ 61,256 at PP 8-18. We also note that the December 19 Order addressed the timely notices and motions to intervene in the instant proceeding and rejected NIPSCO's answer to the answers and comments filed in this proceeding. *See id.* PP 19-20. On December 19, 2013, Old Dominion filed a motion to intervene out-of-time, which we address below.

³⁰ All of the answers and comments filed in the instant proceeding were filed before the MISO-PJM Interregional Compliance Order, which is being issued concurrently with this order and addresses MISO and PJM's Order No. 1000 interregional compliance filings.

also required for a Complaint.³¹ MISO points out that NIPSCO acknowledges that market-to-market payments, such as are currently being made from PJM to MISO, are an acceptable short-term solution, and thus NIPSCO has not suffered any harm from that provision. While parties in PJM are paying these market-to-market payments, MISO states that NIPSCO has been the beneficiary of the payments, and it is not NIPSCO's place to file a Complaint.³² With regard to consolidating the Complaint with the Order No. 1000 interregional compliance filings, MISO contends that the issues raised in the Complaint go beyond Order No. 1000 compliance, so consolidation is unwarranted.³³ Finally, MISO contends that NIPSCO's claim that no transmission project will be approved under the relevant MISO-PJM JOA provisions is unwarranted, as several projects are currently being evaluated.³⁴

17. In addition, MISO argues that to the extent that NIPSCO's claims are, in effect, that the Commission should have imposed different interregional requirements in Order No. 1000, those arguments are an impermissible collateral attack on Order No. 1000. For example, MISO notes that while Order No. 1000 requires only "interregional coordination," the Complaint advocates interregional planning.³⁵ Additionally, MISO explains, while Order No. 1000 requires that interregional and regional processes occur within the same general time frame, NIPSCO advocates that the processes occur concurrently.³⁶ Finally, MISO points out that, while Order No. 1000 requires that the interregional processes are dependent on the regional transmission planning process, the Complaint advocates that the interregional process take priority over the regional processes.³⁷

³¹ MISO Answer at 13-16.

³² *Id.* at 17-18.

³³ *Id.* at 19.

³⁴ *Id.* at 21.

³⁵ *Id.* at 22 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 399; Order No. 1000-A, 139 FERC ¶ 61,132 at P 511).

³⁶ *Id.* at 23 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at PP 436, 438-440; Order No. 1000-A, 139 FERC ¶ 61,132 at P 506).

³⁷ *Id.* at 24 (citing Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 399; Order No. 1000-A, 139 FERC ¶ 61,132 at P 511).

18. MISO claims that NIPSCO has not proven that the MISO-PJM JOA and MISO's Tariff provisions are no longer just and reasonable. MISO notes that the Commission has previously found MISO's RTO structure and rules compliant with Order No. 2000,³⁸ its MTEP process compliant with Order No. 890,³⁹ and the MISO-PJM JOA compliant with the Commission's order regarding the MISO-PJM seam.⁴⁰ MISO contends that NIPSCO bears the burden of proof in showing that the MISO-PJM JOA and the MISO Tariff are no longer just and reasonable, which it has failed to do so far.⁴¹

19. MISO contends that the proper venue to address NIPSCO's concerns is in its stakeholder process. According to MISO, only if the stakeholder process fails is a section 206 complaint appropriate. MISO states that, although it is receptive to some of NIPSCO's suggested reforms, handling them outside of the stakeholder process would deny other stakeholders in MISO a chance to demonstrate their views and provide appropriate feedback.⁴² MISO also addresses each of NIPSCO's six proposed reforms, noting that each is best handled through the Order No. 1000 interregional compliance proceeding or the stakeholder process.⁴³

B. PJM's Answer to Complaint

20. PJM argues that the Complaint should be dismissed because it is premature, alleges speculative harm, and fails to demonstrate that PJM's Order No. 1000

³⁸ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

³⁹ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh'g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁴⁰ MISO Answer at 26 (citing *Midwest. Indep. Transmission Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 106 FERC ¶ 61,251, at P 23 (2004); *Midwest Indep. Transmission Sys. Operator, Inc. and PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,143 (2004)).

⁴¹ *Id.*

⁴² *Id.* at 29-31.

⁴³ *Id.* at 31-42.

interregional compliance filing is unjust or unreasonable. PJM explains that NIPSCO ignores that the RTOs are currently conducting an extensive Coordinated System Plan study on the MISO-PJM seam. According to PJM, the results of the Coordinated System Plan study are expected by mid-2014 and those results may produce solutions to the concerns NIPSCO raised in its Complaint. For example, PJM explains, NIPSCO proposes that the criteria for approval of Cross-Border Market Efficiency Projects should be revised to include the avoidance of market-to-market payments as an indicator of potential seams issues used to consider transmission solutions. PJM argues that, upon closer examination, the cost of congestion on the seam is the only relevant factor to NIPSCO's argument and the Coordinated System Plan study has shown that congestion cost along the MISO-PJM seam has decreased by 52 percent.⁴⁴

21. In addition, PJM states that, as part of the MISO-PJM Coordinated System Plan study process, the RTOs solicited proposals using the Order No. 1000 enhanced process to upgrade the transmission system to address identified issues subject to the joint study process under the terms of the existing MISO-PJM JOA. In response to the solicitation, the RTOs received approximately 76 interregional transmission proposals from 12 proposing companies. PJM notes that NIPSCO itself submitted 14 proposals in or near its service territory for consideration. PJM states that the proposals were reviewed at the October 25, 2013 Interregional Planning Stakeholder Advisory Committee meeting and the Joint RTO Planning Committee is currently evaluating the submitted proposals to determine the extent to which they resolve cross-border transmission issues.⁴⁵ PJM also states that the RTOs have just submitted to the Commission a work plan and timetable that was developed with the state commissions in both the MISO and PJM regions, as well as stakeholders of both RTOs.⁴⁶ PJM notes that, through that process, both the Organization of MISO States and the Organization of PJM States urged the Commission to refrain from usurping the joint common market initiative process already underway.⁴⁷

⁴⁴ PJM Answer at 3-11. Specifically, PJM states that the MISO-PJM joint model used in the Coordinated System Plan study was refreshed with PJM's RTEP 2013 and MISO's MTEP 2013 data and indicates that the projected cost of congestion along the MISO-PJM seam is expected to decrease from \$183,420 (based on the now superseding modeling of the year 2027) to \$87,602 (based on the modeling of the updated assumptions for a 2028 study year). *See id.* at 11.

⁴⁵ *Id.* at 12.

⁴⁶ *Id.* at 13 (citing PJM and MISO, Informational Filing Providing a Description of and Schedule for Joint and Common Market Initiatives of PJM and MISO, Docket No. AD12-16-000 (filed Sept. 26, 2013)).

⁴⁷ *See id.* at Exhibit A.

22. PJM states that NIPSCO fails to provide any evidence that it has been harmed since the changes to the MISO-PJM JOA are only now going into effect. As a result, PJM believes that the Complaint is premature, speculative at best, and not actionable by the Commission at this time. PJM further indicates that the Commission cannot address speculative, future harms and, as the Commission has emphasized, if a party cannot show that “some real harm (actual or potential) is probable, there is little point in wasting the scarce resources of the Commission.”⁴⁸ PJM argues that the Complaint is related to revisions to the MISO-PJM JOA submitted on behalf of the RTOs in their respective Order No. 1000 interregional compliance filings, which are currently pending the Commission’s review and decision, and to issues that are actively engaged in the RTOs’ ongoing Coordinated System Plan study that is being conducted under the existing MISO-PJM JOA process, and initiatives that are being addressed at the MISO and PJM joint and common market meetings (JCM meetings),⁴⁹ both of which began in the summer of 2012.⁵⁰ Therefore, PJM suggests that action by the Commission on the Complaint would be premature and should await the Commission’s consideration of the proposed revisions to the MISO-PJM JOA in the context of MISO’s and PJM’s Order No. 1000 interregional compliance filings and a reasonable time for MISO and PJM to demonstrate that their revisions are in practice meeting the new Order No. 1000 standards.⁵¹

23. PJM also asserts that NIPSCO has failed to demonstrate that PJM’s Order No. 1000 interregional compliance filing is unjust or unreasonable because it has not met its burden of proof. Specifically, NIPSCO has not offered substantial evidence to justify a finding that the existing or revised MISO-PJM JOA protocols are unjust and unreasonable. Therefore, PJM argues that the Complaint is essentially a collateral attack on Order No. 1000. PJM also contends that it would be a waste of Commission resources to address the Complaint now based on a past version of the MISO-PJM JOA.⁵²

24. While PJM moves for summary dismissal of the Complaint, it concedes that NIPSCO’s suggestions are worthy of consideration and review by the Commission as part of monitoring by Commission staff and stakeholders as to whether the proposed

⁴⁸ *Id.* at 25 (citing *So. California Edison Co.*, Opinion No. 284-A, 50 FERC ¶ 61,275 at 61,872 (1990)).

⁴⁹ *See infra* n.69.

⁵⁰ PJM Answer at 9.

⁵¹ *Id.* at 6-7.

⁵² *Id.* at 26-27; *id.* at 6.

MISO-PJM JOA revisions have proven to be an improvement over the existing MISO-PJM JOA process. PJM states that it would be far more productive for NIPSCO to join with other stakeholders in reviewing and critiquing the revised interregional planning process, which is currently in mid-cycle and which awaits Commission approval of the corresponding MISO-PJM JOA changes. As a result, PJM requests that the Commission deny the Complaint as premature and give the parties an opportunity to further implement the revised MISO-PJM JOA reforms presently pending before the Commission before any litigation is considered.⁵³

C. Comments

25. Indiana Utility Regulatory Commission (Indiana Commission), Indiana Office of Utility Consumer Counselor (Indiana Consumer Counselor), American Electric Power Service Corporation, ITC,⁵⁴ Southern Indiana Gas & Electric Company (Southern Indiana), Wind Parties,⁵⁵ Wind Generators,⁵⁶ Hoosier Wind Project, LLC (Hoosier Wind), and E.ON Climate & Renewables North America, LLC (E.ON) generally support the Complaint and argue, among other things, that: (i) the Order No. 1000 interregional compliance filings by MISO and PJM do little to further the development of necessary new transmission infrastructure between the two RTOs;⁵⁷ (ii) MISO and PJM should monitor facilities along the interface and coordinate solutions for facilities that present reliability issues in both regions;⁵⁸ (iii) the MISO-PJM JOA has failed to identify a worthy interregional transmission project, and that continuation of the MISO-PJM JOA will continue to deny customers of MISO and PJM the benefits of cross-border transmission projects;⁵⁹ (iv) the proposed MISO-PJM JOA revisions in the MISO and

⁵³ *Id.* at 27.

⁵⁴ ITC consists of International Transmission Company, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC.

⁵⁵ Wind Parties consist of American Wind Energy Association, Wind on the Wires, and the Mid-Atlantic Renewable Energy Coalition.

⁵⁶ Wind Generators consist of Invenergy Wind Development LLC; Iberdrola Renewables, LLC; Algonquin Power Co.; Infigen Asset Management, LLC; and Acciona Wind Energy USA LLC.

⁵⁷ Indiana Consumer Counselor Comments at 5-6; Southern Indiana Comments at 3.

⁵⁸ Indiana Consumer Counselor Comments at 4-5.

⁵⁹ ITC Comments at 4.

PJM interregional compliance filings do not fully satisfy the Commission's Order No. 1000 directives with regard to interregional transmission coordination;⁶⁰ (v) neither MISO nor PJM addresses the underlying problems with the MISO-PJM JOA planning process or the underlying causes of transmission congestion;⁶¹ and (vi) congestion at the seam between MISO and PJM has led to increasing curtailment of the assets of wind generators in the Commonwealth Edison Transmission Zone in Northern Illinois.⁶²

26. In contrast to the other commenters, Exelon Corporation (Exelon) and MISO Transmission Owners (MISO TOs) oppose the Complaint and argue, among other things, that: (i) NIPSCO's request to impose MISO's metrics on PJM should be dismissed because MISO and PJM have different sets of criteria reflecting differing conditions and differing policy positions in the different regions when evaluating cross-border projects;⁶³ (ii) NIPSCO's request to include market-to-market settlement payments in the benefits analysis for proposed cross-border projects would amount to double-counting congestion, thereby encouraging poor operational practices;⁶⁴ (iii) NIPSCO's proposed reforms have not been set out with sufficient specificity or deliberation and request that the Commission direct MISO and PJM to initiate stakeholder proceedings to develop specific proposals to address any identified concerns;⁶⁵ (iv) the Complaint does not meet the requirements of section 206 of the FPA;⁶⁶ and (v) the Complaint fails to show that the existing MISO-PJM JOA is unjust and unreasonable, or that NIPSCO's proposed reforms are just and reasonable and not unduly discriminatory or preferential.⁶⁷

⁶⁰ Southern Indiana Comments at 4-6.

⁶¹ Wind Parties Comments at 3-4; Hoosier Wind Comments at 5.

⁶² *Id.* at 5; Wind Generators Comments at 1, 5. *See also* Hoosier Wind Comments at 3-4; E.ON Comments at 5.

⁶³ Exelon Comments at 8.

⁶⁴ *Id.* at 10-12.

⁶⁵ MISO TOs Comments at 2.

⁶⁶ *Id.* at 6.

⁶⁷ *Id.*

IV. Subsequent Events

27. As noted above, on December 19, 2013, the Commission issued the December 19 Order holding the Complaint in abeyance.⁶⁸ The Commission stated that the Complaint raises issues that overlap with the Order No. 1000 interregional compliance filings by MISO and PJM (which were pending at that time), and issues that are under consideration by the Commission in other proceedings, including Docket No. AD12-16-000 (relating to capacity delivery across the MISO-PJM seam), Docket No. AD14-3-000 (relating to coordination across the MISO-PJM seam),⁶⁹ and Docket No. EL13-75-000 (relating to MISO-PJM JOA market-to-market issues).⁷⁰ The Commission stated that determinations on these matters may materially affect certain elements of the Complaint. The Commission did not agree with those that argued it should dismiss the Complaint and found instead that the issues raised in the Complaint should be considered at a later time in light of the Commission's determinations in the related matters.⁷¹

28. On July 30, 2014, NIPSCO filed a motion to cease holding the Complaint in abeyance (July 30 Motion).⁷² NIPSCO argues that the JCM meetings are not the proper forum to address the issues raised in its Complaint and that the following additional facts have emerged that favor expeditious Commission action: (1) market-to-market payments were substantial in the first quarter of 2014, as compared to 2013, with payments increasing substantially in both directions; and (2) the Cross-Border Market Efficiency Project study, overseen by the Interregional Planning Stakeholder Advisory Committee, resulted in no projects addressing congestion in the Chicago-Northwest Indiana-Southern

⁶⁸ December 19 Order, 145 FERC ¶ 61,256 at P 21.

⁶⁹ The Commission issued an order on December 19, 2013 in Docket Nos. AD12-16-000 and AD14-3-000 directing Commission staff to participate in MISO's and PJM's JCM meetings. *Capacity Deliverability Across the Midwest Indep. Transmission Sys. Operator, Inc./PJM Interconnection, L.L.C. Seam*, 145 FERC ¶ 61,258 (2013).

⁷⁰ On July 11, 2014, the Commission issued an order in Docket No. EL13-75-000 establishing hearing and settlement judge procedures to consider the rights and obligations of the parties under the existing terms of the MISO-PJM JOA and, thus whether, under the MISO-PJM JOA, MISO and PJM should refund all, or part, of the charges MISO rebated to PJM. An offer of settlement was filed on October 27, 2014 and is currently pending before the Commission.

⁷¹ December 19 Order, 145 FERC ¶ 61,256 at P 21.

⁷² The Indiana Commission and ITC filed comments in support of NIPSCO's motion.

Michigan corridor being identified, notwithstanding the huge volume of market-to-market payments and the fact that several of the top congested flowgates were identified in that corridor.⁷³

29. On August 25, 2014, PJM filed an answer to NIPSCO's motion. PJM argues that the RTOs have made progress through their stakeholder process and the Commission should continue to hold the Complaint in abeyance pending resolution of these issues in the stakeholder process. Specifically, PJM argues that the RTOs have made and continue to make changes to their business process manuals that have improved coordination between the RTOs in identifying issues and coming up with solutions to help reduce constraints along the seam. PJM also notes that MISO and PJM staff recently completed a joint interregional study, of which NIPSCO and other stakeholders participated, that evaluated cross-border and congestion issues. PJM argues that such studies resulted in the RTOs jointly identifying a number of items that need to be addressed, such as potential enhancements to the metrics and thresholds used for interregional transmission coordination, and greater coordination between MISO and PJM planning staff to, among other things, improve modeling of each other's system.⁷⁴

30. On September 9, 2014, NIPSCO filed an answer to PJM's answer.

V. Discussion

A. Procedural Matters

31. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2014), the Commission grants Old Dominion's late-filed motion to intervene, given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 358.213(a)(2) (2014), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We are not persuaded to accept NIPSCO's answer to PJM's answer to the July 30 Motion and, therefore, reject it.

33. NIPSCO's July 30 Motion to cease holding the Complaint in abeyance is granted.

⁷³ July 30 Motion at 8-10.

⁷⁴ PJM Answer to July 30 Motion at 4-6.

B. Substantive Matters

34. In the December 19 Order, the Commission held the Complaint in abeyance because it was concerned, among other things, that the Complaint raises issues that could overlap with the Order No. 1000 interregional compliance filings made by MISO and PJM. As noted above, concurrent with this order, we issue the MISO-PJM Interregional Compliance Order, in which we find that MISO and PJM generally comply with the interregional transmission coordination requirements of Order No. 1000. In that order, we note that the reforms NIPSCO is seeking in this Complaint, which it largely repeats in its protest to MISO and PJM's Order No. 1000 interregional compliance filings, are to be addressed in this Complaint proceeding.⁷⁵

35. Upon consideration of the Complaint and responses thereto, we find that NIPSCO and other commenters raise a number of issues related to the MISO-PJM seam and the MISO-PJM JOA that warrant further examination. As discussed above, at least certain of those issues appear to be related to unusual characteristics of NIPSCO's location relative to the MISO-PJM seam.⁷⁶ The record developed thus far in this proceeding suggests that such issues, and the underlying need to ensure that rates, terms, and conditions of jurisdictional service are just and reasonable and not unduly discriminatory or preferential, may warrant greater coordination at the MISO-PJM seam than that provided for by Order No. 1000's interregional transmission coordination requirements. While Commission staff has monitored such issues through participation in other existing venues (such as the JCM meetings), we find that a technical conference is an appropriate vehicle to develop a more complete record concerning these issues and the specific reforms proposed by NIPSCO in the Complaint. Therefore, we direct Commission staff to establish a technical conference to explore these issues. A separate notice will be issued to establish dates and technical conference details. In order to inform the technical conference discussion, the Commission further directs Commission staff to issue a request for comments on these issues prior to the technical conference.

36. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Consistent with our general policy of providing

⁷⁵ See MISO-PJM Interregional Compliance Order, 149 FERC ¶ 61,250 at P 27.

⁷⁶ The MISO-PJM seam has been a subject of particular and ongoing interest to the Commission since 2002. See, e.g., *Alliance Cos.*, 100 FERC ¶ 61,137, at PP 49-52 (2002). In Order No. 1000, the Commission recognized this distinctive history related to the MISO-PJM seam. Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 662.

maximum protection to customers,⁷⁷ we set the refund effective at the earliest date possible, i.e., September 11, 2013, the date of the Complaint.

37. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that the Commission should be able to render a decision within twelve months of the commencement of the technical conference.

The Commission orders:

(A) Commission staff is hereby directed to convene a technical conference to explore issues related to the MISO-PJM seam and the MISO-PJM JOA, to be held at a date specified in a subsequent notice, as discussed in the body of this order.

(B) The refund effective date established in Docket No. EL13-88-000 pursuant to section 206(b) of the FPA will be September 11, 2013, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁷⁷ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539 (1989), *reh'g denied*, 47 FERC ¶ 61,275 (1989).