

153 FERC ¶ 61,026
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Southern Company Services, Inc.,
KCP&L Greater Missouri Operations Company,
The Empire District Electric Company, and
Associated Electric Cooperative, Inc.

Docket No. EL15-66-000

v.

Midcontinent Independent System Operator, Inc.

Morgan Stanley Capital Group, Inc.

Docket No. EL15-77-000

v.

Midcontinent Independent System Operator, Inc.

ORDER ON COMPLAINTS

(Issued October 15, 2015)

1. On May 21, 2015, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (Southern Companies); KCP&L Greater Missouri Operations Company (KCP&L); the Empire District Electric Company (Empire); and Associated Electric Cooperative, Inc. (Associated Electric) (collectively, Entergy Export Customers) filed a complaint (Entergy Export Customers Complaint) against the Midcontinent Independent System Operator, Inc. (MISO) requesting relief under sections 309,¹ 205,² and 206³ of the Federal Power Act (FPA) in connection with

¹ 16 U.S.C. § 825h (2012).

² 16 U.S.C. § 824d (2012).

an alleged violation of the MISO Open Access Transmission, Energy, and Operating Reserve Markets Tariff (Tariff) and Commission orders. On June 9, 2015, Morgan Stanley Capital Group, Inc. (Morgan Stanley) filed a similar complaint pursuant to FPA sections 205, 206, 306,⁴ and 309 (Morgan Stanley Complaint).

2. Entergy Export Customers and Morgan Stanley (collectively, Complainants)⁵ argue that MISO violated its filed rate by not applying the cost allocation provisions in Attachment FF-6⁶ of the MISO Tariff to “through-and-out” transactions.⁷ Accordingly, Complainants seek refunds pursuant to section 309 of the FPA dating back to December 19, 2013, when MISO first began assessing the allegedly unlawful charges. If the Commission determines that MISO’s charges for through-and-out transactions are permitted under Attachment FF-6, Complainants request that the Commission institute an investigation under section 206 of the FPA as to whether those charges are just and reasonable. As discussed below, we deny the complaints and find that: (1) MISO did not violate its Tariff; and (2) the justness and reasonableness of the rates referenced in the complaints are already being addressed in the FPA section 206 proceeding pending in Docket No. EL14-19-000, rendering the instant complaints duplicative.

³ 16 U.S.C. § 824e (2012).

⁴ 16 U.S.C. § 825e (2012).

⁵ The complaint filed in Docket No. EL15-66-000 by Entergy Export Customers and the complaint filed in Docket No. EL15-77-000 by Morgan Stanley both make substantially the same allegations against MISO. For this reason, we refer collectively to Complainants, where appropriate.

⁶ Attachment FF-6 of the MISO Tariff outlines “Transmission Expansion Planning and Cost Allocation for Second [Planning] Area’s Transition.” The Second Planning Area is the area consisting of the states where Entergy Services Inc. and its operating companies (Entergy) owns and/or operates transmission facilities and any adjacent areas where transmission facilities are conveyed to MISO’s functional control. *See, e.g., Midwest Indep. Trans. Sys. Operator, Inc.*, 144 FERC ¶ 61,020, at P 4 (2013).

⁷ “Through-and-out” transactions involve transmission service with: (1) reservations with the source in the MISO region and the sink outside of the MISO region, also referred to as “drive-out” transmission service; and (2) reservations that cross MISO but where both the source and sink are outside of MISO, also referred to as “drive-through” service.

I. Background and Related Proceedings

3. On December 19, 2013, the Entergy Operating Companies⁸ transferred functional control over their transmission facilities located in the States of Arkansas, Mississippi, Louisiana, and Texas to MISO. Prior to that time, customers had been taking transmission service under the terms and conditions of Entergy's then-effective open access transmission tariff (Entergy Tariff). After Entergy's integration into MISO, transmission service in Entergy became subject to the MISO Tariff.⁹

4. Schedule 7 (Long-Term and Short-Term Firm Point-to-Point Transmission Service) of MISO's Tariff provides that transmission customers will pay a single system-wide rate for firm, point-to-point transmission service associated with through-and-out transactions.¹⁰ Schedule 8 (Non-Firm Point-to-Point Transmission Service) of MISO's Tariff provides for a similar rate assessment for non-firm, point-to-point transmission service associated with through-and-out transactions.¹¹ MISO calculates the system-wide rate assessed through Schedules 7 and 8 based on an average of all MISO transmission owners' Attachment O rates, which exclude MISO Transmission Expansion Plan project costs recovered under Schedules 26, 26-A, and 45.¹² MISO Transmission Expansion Plan project costs, excluding Multi-Value Projects,¹³ are assessed to through-and-out

⁸ 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).

⁹ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 (2013) (MISO-Entergy Rates Order), *order on reh'g*, 146 FERC ¶ 61,111 (2014) (Rates Rehearing Order), *order on reh'g*, 151 FERC ¶ 61,263 (2015).

¹⁰ MISO Tariff, Schedule 7, Section 2.

¹¹ MISO Tariff, Schedule 8, Section 2.

¹² Schedule 45 of the MISO Tariff provides for cost recovery of North American Electric Reliability Corporation recommendation or essential action.

¹³ Multi-Value Projects are defined as one or more network upgrades that address a common set of transmission issues that meet certain conditions, as defined in Attachment FF of the MISO Tariff. *See* MISO Tariff, Module A, Section 1.M, Definitions - M.

transactions through Schedule 26 (Network Upgrade Charge from Transmission Expansion Plan).¹⁴ Through-and-out transactions are assessed Multi-Value Project costs under Schedule 26A (Multi-Value Project Usage Rate).¹⁵ MISO calculates these MISO Transmission Expansion Plan project costs through Attachments GG (Network Upgrade Charge) and MM (Multi-Value Project Charge) in its Tariff.

A. Description of Complainants

5. Southern Companies state that they are parties to two separate 202 MW long-term firm point-to-point transmission service agreements that specify service from Entergy's interconnections with Southwest Power Pool, Inc. (SPP), across the Entergy footprint, and into the Southern Companies' system. KCP&L states that it utilizes transmission service, previously governed by a long-term point-to-point transmission service agreement with Entergy, to serve its native load customers in Missouri by importing power from the Crossroads generating facility located in Clarksdale, Mississippi. Empire states that it uses transmission service on Entergy's transmission system, in accordance with a 30-year firm point-to-point transmission service agreement, for receipt of power from a generating station to which it has ownership and contractual entitlements. Associated Electric states that it is a rural electric cooperative that has 200 MW of long-term firm point-to-point service across the Entergy system.

6. Morgan Stanley states that it is a power marketer and an active participant in the various electricity markets in North America, including MISO, and is a supplier to utilities in SPP. Morgan Stanley states that, before Entergy joined MISO, Morgan Stanley was a party to two separate transmission service agreements under Entergy's Tariff. Since 2014, Morgan Stanley has been taking 75 MW of firm point-to-point service and was being charged under Schedules 7 and 26 of the MISO Tariff for the service formerly provided under the Entergy Tariff. Morgan Stanley states that its transmission service traverses Entergy's system from a receipt point at the Entergy border, travels across the Entergy footprint, and delivers power to Southern Company.

B. The Entergy Cost Allocation Proceeding

7. Through a series of orders,¹⁶ the Commission accepted proposed revisions to the MISO Tariff regarding the planning and cost allocation of network upgrades,¹⁷ in order to

¹⁴ MISO Tariff, Schedule 26, Section 2.

¹⁵ MISO Tariff, Schedule 26A.

¹⁶ *Midwest Indep. Trans. Sys. Operator, Inc.*, 139 FERC ¶ 61,056 (2012) (First Entergy Cost Allocation Order), *order on reh'g and compliance*, 141 FERC ¶ 61,128

establish a transition for the integration of the Entergy Operating Companies into MISO as transmission-owning members (Entergy Cost Allocation Proceeding). The Tariff revisions provided for a five-year transition governing regional allocation of network upgrades across two areas of MISO's transmission system: (1) MISO as it existed before the entry of Entergy, as modified by the entry or withdrawal of transmission-owning members in the Midwest (the First Planning Area, also referred to as MISO Midwest); and (2) the area consisting of the states where Entergy owns and/or operates transmission facilities and any adjacent areas where transmission facilities have been conveyed to MISO's functional control (the Second Planning Area, also referred to as MISO South).

8. In the Entergy Cost Allocation Proceeding, the Commission accepted a new proposed Attachment FF-6 (Transmission Expansion Planning and Cost Allocation for Second Planning Area's Transition), which sets forth certain rules with respect to cost allocation for various categories of transmission projects approved under the MISO Transmission Expansion Plan during and after the five-year transition period.

9. The cost allocation rules under Attachment FF-6 generally provide that the costs of MISO Transmission Expansion Plan projects approved before or during the five-year transition period that terminate exclusively in one Planning Area (with the exception of certain Multi-Value Projects) should be allocated exclusively to that Planning Area. The rationale for the cost allocation rules was that the transmission systems of MISO and Entergy were not planned using consistent planning criteria and assumptions, and there was no basis to conclude that the Planning Areas would mutually derive benefits from projects that terminate exclusively in either Planning Area.¹⁸

C. MISO-Entergy Rates Proceeding

10. On June 20, 2013, the Commission accepted, suspended, and set for hearing certain proposed MISO Tariff revisions that were filed to effectuate the transfer of the transmission assets of Entergy and certain of its subsidiaries to ITC Midsouth, a newly-created subsidiary of ITC Holdings Corp. (ITC) and certain of its subsidiaries (Entergy-ITC Transaction) and to effectuate the integration of the Entergy transmission facilities

(2012) (Second Entergy Cost Allocation Order), *order on reh'g and compliance*, 144 FERC ¶ 61,020 (2013).

¹⁷ Network upgrades include Baseline Reliability Projects, Generator Interconnection Projects, Transmission Delivery Service Projects, Market Efficiency Projects, and Multi-Value Projects.

¹⁸ First Entergy Cost Allocation Order, 139 FERC ¶ 61,056 at PP 69, 182.

into MISO.¹⁹ The Tariff revisions were filed under FPA sections 203, 205, and 305.²⁰ As relevant to these proceedings, Associated Electric filed a protest requesting confirmation that the Entergy transition plan for Multi-Value Project and non-Multi-Value Project network upgrade costs would apply to the transmission rates of all Entergy customers, including customers taking point-to-point service under Schedules 7 and 8 for drive-out and drive-through transactions. The Commission found that Associated Electric's request was beyond the scope of the proceeding and noted that the issue was being addressed in the Entergy Cost Allocation Proceeding.²¹ The Commission also disagreed with Associated Electric's assertion that it was not being treated comparably to other Entergy transmission customers. The Commission found that Associated Electric was being treated comparably with other similarly-situated customers, i.e., those other customers requesting drive-through service on MISO's transmission system, because any other transmission customer seeking drive-through service across Entergy's transmission system would be charged the same rate that Associated Electric would be charged.²²

11. On rehearing of the MISO-Entergy Rates Order, Associated Electric argued that the Commission erred in concluding that Associated Electric's point-to-point transmission rate increase was being addressed in the Entergy Cost Allocation Proceeding because that proceeding did not address rates under Schedule 7 of the MISO Tariff. The Commission agreed in its rehearing order that MISO's proposed regional through-and-out rate for service over the transmission system in the MISO South region raised issues of material fact and set those issues for hearing and settlement judge

¹⁹ MISO-Entergy Rates Order, 143 FERC ¶ 61,257. 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.

²⁰ 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, and EL12-107-000 (filed Sept. 24, 2012) (collectively, Joint Application). The Commission ultimately issued two orders on the Joint Application. The order issued on June 20, 2013 in Docket No. EC12-145-000, *et al.* addressed the FPA sections 203 and 305(a) parts of the Joint Application, and the MISO-Entergy Rates Order addressed the section 205 part of the Joint Application.

²¹ MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 171.

²² *Id.*

procedures by instituting an FPA section 206 proceeding in newly-created Docket No. EL14-19-000 and consolidating that proceeding with the MISO-Entergy Rates Proceeding.²³

II. Notice of Filing and Responsive Pleadings

A. Entergy Export Customers Complaint

12. Notice of the Entergy Export Customers Complaint was published in the *Federal Register*, 80 Fed. Reg. 30,451 (2015), with answers, interventions, and protests due on or before June 9, 2015. Notices of intervention were filed by the Missouri Public Service Commission, the Illinois Commerce Commission, the Council of the City of New Orleans (New Orleans Council), the Mississippi Public Service Commission (Mississippi Commission), the Alabama Public Service Commission (Alabama Commission), and the Arkansas Public Service Commission (Arkansas Commission).

13. Timely motions to intervene were filed by: Consumers Energy Company; Exelon Corporation; Ameren Services Company; Enel Green Power North America, Inc.; American Electric Power Service Corporation; Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission & Public Service Commission of Yazoo City, Mississippi; Public Service Electric and Gas Company; EDP Renewables North America LLC (EDP Renewables); Wisconsin Electric Power Company, Terra-Gen Energy Management (Terra-Gen); Arkansas Electric Cooperative Corporation (Arkansas Cooperative); Missouri Joint Municipal Electric Utility Commission and the Cities of Carthage, Missouri, Malden, Missouri, and Piggott, Arkansas (Missouri JMEUC and Arkansas Cities); Morgan Stanley; MISO Transmission Owners;²⁴ and Entergy on behalf

²³ Rates Rehearing Order, 146 FERC ¶ 61,111.

²⁴ For purposes of this proceeding, MISO Transmission Owners are: Ameren Services Company, as agent for Union Electric Company; Ameren Illinois Company; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Indiana, Inc.; Great River Energy; Hoosier Energy; Rural Electric Cooperative, Inc.; International Transmission Company; ITC Midwest LLC; Indianapolis Power & Light Company; Michigan Public Power Agency; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric

(continued ...)

of the Entergy Operating Companies. Motions to intervene out-of-time were filed by the NRG Companies;²⁵ the American Wind Energy Association (AWEA); Wabash Valley Power Association, Inc. (Wabash Valley); the Louisiana Public Service Commission (Louisiana Commission); the Public Utility Commission of Texas (Texas Commission); and the Organization of MISO States.

14. On June 9, 2015, MISO filed an answer. Substantive comments or protests were filed by MISO Transmission Owners, Entergy, Terra-Gen, Arkansas Cooperative, Morgan Stanley, and the Alabama Commission. In addition, comments were filed out-of-time by EDP Renewables and AWEA and The Wind Coalition (Wind Coalition).

15. On June 29, 2015, Entergy Export Customers filed a motion for leave to answer and answer. On July 14, 2015, MISO filed a motion for leave to answer and answer in opposition to Entergy Export Customers' answer.

16. MISO describes the complaint as challenging its pre-existing drive-out and drive-through transmission service rates under Schedules 7, 8, and 26. MISO, Entergy, and MISO Transmission Owners maintain that MISO is properly administering these rate schedules and that Entergy Export Customers' tariff violation claim is baseless, as Attachment FF-6 does not apply to the through-and-out charges referenced in the complaint. Further, they argue that the FPA section 206 complaint should be dismissed because it does not present any new claims not already set for hearing in the MISO-Entergy Rates Proceeding or resolved in other proceedings.

17. Terra-Gen, EDP Renewables, and AWEA and the Wind Coalition support the Entergy Export Customers Complaint to the extent it seeks Commission review of the transmission rates charged by MISO for through-and-out transmission service on the MISO South system.²⁶ These commenters assert that excessive rates for transmission

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

²⁵ The NRG Companies comprise NRG Power Marketing LLC and GenOn Energy Management, LLC.

²⁶ AWEA and the Wind Coalition Comments, Docket No. EL15-66-000 at 3; EDP Renewables Comments, Docket No. EL15-66-000 at 3-4; Terra-Gen Comments, Docket No. EL15-66-000 at 4.

service across MISO South could impede renewable generation developers from competitively marketing their generation to utilities in the Southeast.²⁷

18. Arkansas Cooperative states that the concerns raised by Entergy Export Customers could be mitigated by the Commission addressing the regional transmission organization (RTO) scope and configuration requirements in Order No. 2000.²⁸

19. Morgan Stanley supports the Entergy Export Customers Complaint and states that it is similarly aggrieved by MISO's application of a system-wide rate for through-and-out service. The Alabama Commission also states that it is troubled by the sharp increase in transmission costs, particularly given the allegations that the facilities and services associated with those costs have not changed in any fundamental respect, except that they are now administered by MISO rather than directly by Entergy.

B. Morgan Stanley Complaint

20. Notice of the Morgan Stanley Complaint was published in the *Federal Register*, 80 Fed. Reg. 34,395 (2015), with answers, interventions, and protests due on or before June 29, 2015. Notices of intervention were filed by the New Orleans Council, Arkansas Commission, and Louisiana Commission. Timely motions to intervene were filed by Arkansas Cooperative; the NRG Companies; Ameren Services Company; Associated Electric; Wisconsin Electric Power Company; KCP&L; Southern Companies; Empire; Missouri JMEUC and Arkansas Cities; MISO Transmission Owners; and Entergy. Calpine Corporation and Wabash Valley filed motions to intervene out-of-time.

21. On June 29, 2015, MISO filed an answer. Substantive comments or protests were filed by MISO Transmission Owners, Entergy, Arkansas Cooperative, and Entergy Export Customers.

22. On July 14, 2014, Morgan Stanley filed a motion for leave to answer and answer.

²⁷ AWEA and the Wind Coalition Comments, Docket No. EL15-66-000 at 3; EDP Renewables Comments, Docket No. EL15-66-000 at 3; Terra-Gen Comments, Docket No. EL15-66-000 at 4-5.

²⁸ Arkansas Cooperative Comments, Docket No. EL15-66-00 at 3-4 (citing *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)).

23. MISO, MISO Transmission Owners, and Entergy argue that Morgan Stanley's tariff violation claim is baseless because Attachment FF-6 does not apply to the through-and-out charges referenced in the complaint. Further, they argue that the FPA section 206 complaint should be dismissed because it does not present any new claims not already set for hearing in the MISO-Entergy Rates Proceeding or resolved in other proceedings.

24. Entergy Export Customers assert that the Morgan Stanley Complaint demonstrates that the problems with MISO's charges for through-and-out transactions in MISO South are much more extensive than previously envisioned or considered by the Commission. Entergy Export Customers state that because the Morgan Stanley Complaint represents a new independent challenge to MISO's assessment of system-wide rates on transactions that rely exclusively on facilities within the MISO South footprint, the Commission should establish an appropriate refund effective date and address the Morgan Stanley Complaint on the merits.

25. Arkansas Cooperative states that the concerns raised by Morgan Stanley could be mitigated by the Commission addressing the RTO scope and configuration requirements in Order No. 2000.²⁹

III. Procedural Matters

26. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2015), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to the proceedings in which they were filed. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2015), we grant the late-filed motions to intervene in Docket No. EL15-66-000 filed by the NRG Companies, AWEA, Wabash Valley, the Louisiana Commission, the Texas Commission, and the Organization of MISO States; and the late-filed motions to intervene filed by Calpine Corporation and Wabash Valley in Docket No. EL15-77-000, given their interests in the proceedings, the early stage of the proceedings, and the absence of undue prejudice or delay.

27. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2015), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We are not persuaded to accept the answers filed by the Entergy Export Companies, Morgan Stanley and MISO and will, therefore, reject them.

²⁹ Arkansas Cooperative Comments, Docket No. EL15-77-000 at 4.

IV. Substantive Matters

28. Complainants argue that MISO is violating what it calls the “no-cost-sharing rules” in its Tariff, Commission orders establishing a no-cost-sharing rule for system-wide rates, and cost causation principles by shifting MISO Midwest costs onto the former customers of Entergy. We will address these arguments below.

A. Tariff Violation Claim and Cost Allocation Orders

1. Complaints

29. Complainants assert that Attachment FF-6 to MISO’s Tariff establishes a no-cost-sharing rule that provides that “any system-wide rate or cost allocation under the provisions of Attachment FF. . . shall be limited to the Planning Area where the project terminates exclusively.”³⁰ The Complainants allege that MISO violated this no-cost-sharing rule through its assessment of a MISO system-wide rate for transmission used to export power out of the Second Planning Area. As a result, Complainants allege that, since December 2013 when Entergy joined MISO, MISO has been charging rates in excess of the filed rate.

30. Entergy Export Customers represent that their rates for export service are nearly double what they had been charged prior to Entergy’s integration into MISO. Morgan Stanley represents that its current charges have increased by 94 percent over what they had been paying under the Entergy Tariff.³¹ Through the alleged violation of the no-cost-sharing rule, Complainants contend that MISO has improperly shifted the costs of MISO Transmission Expansion Plan facilities in MISO Midwest on to customers taking service across MISO South. Entergy Export Customers add that this, in turn, has unduly influenced the economics and potential acquisition and delivery of wind-generation from the West to Southeastern loads and of low-cost Southeastern base-load generation to Western loads.

31. Complainants contend that MISO acknowledged in the Entergy Cost Allocation Proceeding that Attachment FF-6 governs the charge under Schedule 26 and the rate

³⁰ Entergy Export Customers Complaint at 2 (citing MISO Tariff, Attachment FF-6, Section IV.A(2)(b)).

³¹ Morgan Stanley Complaint at 7.

calculations under Attachment GG, “not the other way around.”³² According to Complainants, MISO argued that changes to Schedule 26 were not required by the First Entergy Cost Allocation Order and that Associated Electric’s request for such Tariff changes were foreclosed in the compliance phase of that proceeding. Complainants continue that MISO stated that:

those changes are unnecessary because . . . Attachment FF-6 clearly sets forth a no-cost-sharing rule for such non-[Multi-Value Projects] associated with the Entergy period, and “Attachment FF-6 ... takes precedence over Attachment FF.” As recognized by [Associated Electric], in matters relating to the Entergy transition, Attachment FF-6 governs the charges under Schedule 26, and the rate calculations in Attachment GG, “not the other way around.”³³

32. Entergy Export Customers assert that the Schedule 7 rate is also governed by Attachment FF-6 because it is determined based on the Attachment O formula, and the facility costs feeding that formula are determined by Attachment FF (as modified by Attachment FF-6). Morgan Stanley further argues that Schedule 7 incorporates an allocated share of costs assessed pursuant to the relevant Attachment O formula rates and the Network Upgrade Charge under Schedule 26.³⁴

33. According to Complainants, the Commission held that the no-cost-sharing rule applies to charges for point-to-point export services regardless of whether MISO made conforming revisions to the relevant rate schedules.³⁵ Complainants base this argument on the Commission’s statement in the Second Entergy Cost Allocation Order that:

The [First Entergy Cost Allocation Order] did not require Filing Parties

³² Entergy Export Customers Complaint at 26 (citing MISO Answer, Docket No. ER12-480-002 at 3 (filed Jun. 26, 2012)); Morgan Stanley Complaint at 9 (citing same).

³³ Entergy Export Customers Complaint at 21 (citing MISO Answer, Docket No. ER12-480-002 at 3 (filed June 26, 2012)); Morgan Stanley Complaint at 9 (citing same).

³⁴ Morgan Stanley Complaint at 3.

³⁵ Entergy Export Customers Complaint at 4 (citing Second Entergy Cost Allocation Order, 141 FERC ¶ 61,128 at P 108); Morgan Stanley Complaint at 9 (citing same).

to revise Tariff provisions regarding the allocation of non-Multi-Value Projects costs in Schedule 26 and Attachment GG. Therefore, we find Arkansas Cooperative's arguments regarding potential revisions to these Tariff sections to be beyond the scope of this compliance proceeding, and we need not address them. Nonetheless, we note that Attachment FF-6 contains a thorough description of the allocation of non-Multi-Value Projects costs, including provisions to ensure that the cost of non-Multi-Value Projects approved before or during the five-year transition period should not be shared between the Planning Areas unless the non-Multi-Value Projects terminates in both Planning Areas.³⁶

Morgan Stanley further argues that, because any pre-existing MISO Tariff system-wide rate formula, as modified by Attachment FF-6, was capable of separate application for customers of either the MISO Midwest or MISO South regions respectively, it was not necessary for MISO to make conforming or ministerial changes to existing rate schedules or attachments for the no-cost-sharing rule to apply.³⁷

34. Entergy Export Customers further argue that the Commission reaffirmed the application of the no-cost-sharing rule for rates for point-to-point service through or out of the MISO South region when the Commission approved language for Attachment MM, which provided for the rate under Schedule 26-A for Multi-Value Project facilities to be based upon the planning area "associated with" the export interface.³⁸ According to Entergy Export Customers, the only reading of the Entergy Cost Allocation Proceeding that makes any sense is that the Commission intended to protect *all* of Entergy's transmission customers (not just those delivering to internal loads) from cost shifts and reallocation from the MISO Midwest region.³⁹

35. Entergy Export Customers state that, based on the revisions to Attachment MM, MISO has abided by the no-cost-sharing rule with respect to Schedule 26-A but has violated the rule with respect to system-wide rates in other major rate schedules applicable to export service from MISO South – Schedules 7, 8, and 26. Entergy Export Customers argue that this has rendered the bizarre result of Multi-Value Projects' cost allocations being restricted to the region in which the facilities are located but with no

³⁶ Second Entergy Cost Allocation Order, 141 FERC ¶ 61,128 at P 108.

³⁷ Morgan Stanley Complaint at 10.

³⁸ Entergy Export Customers Complaint at 20.

³⁹ *Id.* at 5.

similar restriction occurring for non-Multi-Value Projects (which by definition, Entergy Export Customers argue, are more local in character and provide fewer “regional benefits”).⁴⁰

2. Responsive Pleadings

36. Entergy, MISO, and MISO Transmission Owners argue that Attachment FF-6 does not apply to the through-and-out service rates referenced in the complaints. MISO explains that Attachment FF of the Tariff describes the process that MISO uses to develop the MISO Transmission Expansion Plan, establishing strict criteria for various defined categories of Network Upgrades that qualify for regional cost allocation. MISO also explains that with the exception of Multi-Value Projects, the costs of these projects are recovered through the network upgrade charge determined under Attachment GG and Schedule 26, while the costs of approved Multi-Value Projects are determined through a separate mechanism set forth in Attachment MM and Schedule 26-A.⁴¹ Entergy states that Attachment FF-6 specifies the methodology that will be used to calculate the Multi-Value Projects usage rates if and when Multi-Value Project costs are allocated across planning areas. Entergy argues that Attachment FF-6 does not otherwise address or affect the calculation of rates that apply to through-and-out service. In particular, Entergy states that Attachment FF-6 does not address or affect rates for through-and-out service related to non-Multi-Value Project facilities.⁴²

37. Likewise, MISO Transmission Owners state that Attachment FF-6 primarily allocates transmission upgrade costs within MISO, with the limited exception of rates for Multi-Value Projects, which apply to adjacent external entities’ export and wheel-through transactions through the same, phased-in approach as applies to customers located within MISO’s Second Planning Area.⁴³ MISO Transmission Owners assert that transactions like Morgan Stanley’s are properly categorized as “export” and “through” transactions in the context of Attachment FF-6.⁴⁴ Thus, they argue, the only no-cost-sharing provisions

⁴⁰ *Id.* at 27.

⁴¹ MISO Answer, Docket No. EL15-66-000 at 12-13; MISO Answer, Docket No. EL15-77-000 at 14.

⁴² Entergy Protest, Docket No. EL15-66-000 at 20; Entergy Protest, Docket No. EL15-77-000 at 17-18.

⁴³ MISO Transmission Owners Answer, Docket No. EL15-66-000 at 16-17.

⁴⁴ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 16 (citing MISO Tariff, Attachment FF-6, Sections IV.A.1, IV.B.4.a-g).

approved in the Entergy Cost Allocation Proceeding that apply to Morgan Stanley are those applicable to Multi-Value Projects under Schedule 26-A.⁴⁵

38. MISO and MISO Transmission Owners maintain that the Attachment FF-6 provisions do not apply to the Schedule 26 through-and-out rate because the language of Attachment FF-6 is restricted to cost allocation to “load and/or pricing zones” in the Second Planning Area and does not apply to transmission service reservations for load outside of the MISO footprint. MISO Transmission Owners add that Complainants are not located in the Second Planning Area and that the cost allocation provisions of Attachment FF-6 are therefore inapplicable to them.⁴⁶

39. MISO Transmission Owners allege that Morgan Stanley, when referencing cost allocation provisions approved in the Entergy Cost Allocation Proceeding, inserts phrases referring to “Entergy customers” in place of the actual Tariff language, which uses the phrase “Load and/or Pricing Zones in the Second Planning Area.”⁴⁷ MISO Transmission Owners emphasize that these phrases are not equivalent, noting that Morgan Stanley is not a transmission owner in a Second Planning Area Load and/or Pricing Zone and that Morgan Stanley’s transmission service agreement transactions do not sink in the Second Planning Area.

40. MISO, Entergy, and MISO Transmission Owners also argue that Attachment FF-6 does not apply to Schedules 7, 8, and 9. According to MISO, under the MISO transmission rate design, the base point-to-point and network transmission service charges assessed under Schedules 7, 8, and 9 do not include, and are entirely separate from, various additional charges that are assessed to MISO customers to fund the cost of certain new transmission projects and upgrades.⁴⁸ MISO maintains that there is no overlap among these various cost recovery and allocation mechanisms because they recover the cost of different categories of transmission facilities.⁴⁹ As a result, the base

⁴⁵ *Id.* at 17, 24 (citing Morgan Stanley Complaint at 9 & n.20).

⁴⁶ MISO Transmission Owners Answer, Docket No. EL15-66-000 at 14-15; MISO Transmission Owners Answer, Docket No. EL15-77-000 at 15-16.

⁴⁷ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 15 (citing MISO Tariff, Attachment FF-6, Sections IV.A.1 and IV.A.2).

⁴⁸ MISO Answer, Docket No. EL15-66-000 at 12; MISO Answer, Docket No. EL15-77-000 at 14.

⁴⁹ MISO Answer, Docket No. EL15-66-000 at 13; MISO Answer, Docket No. EL15-77-000 at 15.

transmission rates, as set forth in Schedules 7, 8, and 9, including the Schedules 7 and 8 through-and-out rates, do not include any revenue requirements associated with any MISO Transmission Expansion Plan projects approved for either regional cost allocation under Attachment FF⁵⁰ or cost allocation under Schedules 26 and 26-A and Attachments GG and MM.⁵¹ Therefore, the cost sharing exemptions in Attachment FF-6 do not apply to these schedules.

41. MISO and Entergy take issue with Complainants' characterization of Schedules 7 and 8 as a "system-wide rate or cost allocation under the provisions of Attachment FF." MISO asserts that, although Attachment FF provides for certain categories of approved MISO Transmission Expansion Plan projects to be allocated "system-wide," this has nothing to do with "system-wide" rates for through-and-out transactions, which do not allocate any costs to the MISO footprint. MISO argues that while the system-wide transmission rates under Attachment FF apply within the MISO footprint, the Schedules 7 and 8 through-and-out rates apply to the rates charged to loads outside the MISO footprint.⁵²

42. Entergy states that Attachment FF provides that the costs of Market Efficiency Projects are allocated 20 percent on a system-wide basis and 80 percent to all transmission customers in each of the Local Resource Zones, with the allocation to each Local Resource Zone based on relative benefits.⁵³ Entergy states that split between the allocation of costs on a system-wide basis and the allocation of costs on a Local Resource Zone basis has no effect on the rates charged to through-and-out service.⁵⁴ First, Entergy states that the costs of Market Efficiency Projects are not recovered under Schedule 7. Second, Entergy states that the rates for through-and-out service calculated under Schedule 26 and Attachment GG are based on the total costs of all Market Efficiency

⁵⁰ MISO Answer, Docket No. EL15-66-000 at 13.

⁵¹ MISO Answer, Docket No. EL15-77-000 at 15.

⁵² MISO Answer, Docket No. EL15-66-000 at 15; MISO Answer, Docket No. EL15-77-000 at 15-16.

⁵³ Entergy Protest, Docket No. EL15-66-000 at 12 (citing MISO Tariff, Attachment FF-6, Sections III.A.2.f, IV.A.1); Entergy Protest, Docket No. EL15-77-000, at 14 (citing same).

⁵⁴ Entergy Protest, Docket No. EL15-66-000 at 12-13; Entergy Protest, Docket No. EL15-77-000 at 14.

Projects, whether allocated on a system-wide basis or on the basis of Local Resource Zones under Attachment FF.⁵⁵

43. MISO, Entergy, and the MISO Transmission Owners argue that Complainants are incorrect when they state that “facility costs feeding the formula in Attachment O . . . are determined by Attachment FF.” MISO explains that the separation between different project categories is achieved through the process of how MISO calculates its revenue requirement in accordance with Attachment O. MISO explains that it calculates the revenue requirement for all transmission facilities of a particular transmission owner (including MISO Transmission Expansion Plan projects) based on FERC Form No. 1 data. MISO states that it inputs the Attachment O results into the Attachment GG template (for MISO Transmission Expansion Plan projects that are not Multi-Value Projects) and the Attachment MM template (for Multi-Value Projects) in order to calculate the revenue requirements.⁵⁶ Next, MISO explains that the revenue requirements determined by Attachments GG and MM are then deducted from the Attachment O revenue requirement to avoid double recovery, and it is this *net* Attachment O revenue requirement, which excludes the revenue requirements of MISO Transmission Expansion Plan-approved projects recovered through Attachments GG and MM, that is used to develop the Schedules 7 and 8 rates. MISO explains that these net Attachment O revenue requirements of all the transmission owners are then averaged⁵⁷ to calculate the Schedules 7 and 8 through-and-out rates for each transmission owner.

44. According to MISO, the Second Entergy Cost Allocation Order does not support Complainants’ argument as to a tariff violation. MISO states that the Second Entergy Cost Allocation Order made no mention of the Schedules 7 and 8 through-and-out rates.⁵⁸ Further, MISO points out that the Commission rejected a request by Arkansas Electric to

⁵⁵ Entergy Protest, Docket No. EL15-66-000 at 13; Entergy Protest, Docket No. EL15-77-000 at 14.

⁵⁶ MISO Answer, Docket No. EL15-77-000 at 14.

⁵⁷ MISO Answer, Docket No. EL15-66-000 at 16; MISO Answer, Docket No. EL15-77-000 at 14-15. The MISO Transmission Owners and Entergy raise similar arguments regarding the Attachment O revenue requirement and the calculation of the Schedules 7 and 8 through-and-out rates. *See* MISO Transmission Owners Answer, Docket No. EL15-77-000 at 20-21; Entergy Protest, Docket No. EL15-66-000 at 16; Entergy Protest, Docket No. EL15-77-000 at 15.

⁵⁸ MISO Answer, Docket No. EL15-66-000 at 21-22; MISO Answer, Docket No. EL15-77-000 at 20.

clarify the treatment of export and wheel-through transactions under Schedule 26. MISO argues that the language in Attachment FF-6 is precise, and while it exempts loads and/or pricing zones within MISO from the Schedule 26 zonal charges, no such exemption extends to the Schedule 26 through-and-out rate. According to MISO, none of the Complainants protested MISO's filings or sought rehearing in the Entergy Cost Allocation Proceeding to obtain the exemption they now demand.⁵⁹

45. Entergy states that MISO's filing in the Entergy Cost Allocation Proceeding did not include any proposed changes to the provisions of Schedule 26 or Attachment GG that address the calculation of rates for through-and-out service, nor did it include any proposed changes to Schedule 7 or to Attachment O. In contrast, Entergy states that MISO proposed to amend Schedule 26-A to provide that rates for service to loads within a planning area would not include costs of certain facilities located wholly within the other planning area.⁶⁰ Entergy also states that in the First and Second Cost Allocation Orders, the Commission did not require any changes to the rates for through-and-out service under Schedules 7 or 26.⁶¹

46. MISO states that other Commission's orders are clear that Complainants are not exempt from Schedules 7, 8, and 26. MISO maintains that in the MISO-Entergy Rates Proceeding, the Commission left no doubt that the Schedules 7 and 8 through-and-out rates are fully applicable to Complainants, albeit subject to refund and hearing.⁶² MISO argues that because its proposed regional through-and-out rate was accepted in the MISO-Entergy Rates Proceeding and became effective in accordance with FPA

⁵⁹ MISO Answer, Docket No. EL15-66-000 at 22; MISO Answer, Docket No. EL15-77-000 at 21.

⁶⁰ Entergy Protest, Docket No. EL15-66-000 at 22; Entergy Protest, Docket No. EL15-77-000 at 19.

⁶¹ Entergy Protest, Docket No. EL15-66-000 at 24. *See also* MISO Transmission Owners Answer, Docket No. EL15-77-000 at 19 (arguing that the Commission did not require any changes to Attachment GG or Schedule 26 in the MISO Tariff, which together provide for a system-wide rate for non-Multi-Value Projects for export and wheel-through transactions).

⁶² MISO Answer, Docket No. EL15-66-000 at 20; MISO Answer, Docket No. EL15-77-000 at 19.

section 205, a proceeding under FPA section 206 was necessary in order to move forward with the investigation desired by the Commission.⁶³

47. Entergy states that prior statements made by certain Complainants contradict their argument here that charging an average single system-wide rate for through-and-out service is inconsistent with Attachment FF-6, Schedule 7, Attachment O, or the Commission's orders approving Attachment FF-6.⁶⁴ For example, Entergy cites a protest filed by KCP&L in Docket No. ER14-148-000, where KCP&L argued that a large portion of the increase in rates associated with its transmission service

will be based on the [Regional Through-and-Out Rate] applied to the Crossroads [Transmission Service Agreement] because it sinks in [SPP], and not MISO. [KCP&L] *bases this on its reading of the MISO Tariff*. Specifically, MISO's Schedule 7 provides that transmission charges are calculated pursuant to Attachment O. For transmission sinking outside MISO, like the Crossroads contract path, there is a "single system-wide rate."⁶⁵

48. Similarly, Entergy cites a joint pleading filed by KCP&L and Empire where those parties argued that MISO should not be permitted to charge its Schedule 7 rate to existing customers taking through-and-out service but did not argue that, when the MISO Tariff is correctly interpreted, the rates that apply to through-and-out service are not average system-wide rates.⁶⁶

49. Entergy also argues that in a protest filed in Docket No. EC12-145-000, *et al.*, Associated Electric argued that the Commission should require MISO and ITC "to apply the Entergy transition plan's thirteen-year phase-in period" to the Schedule 7 rate applied to Associated Electric's through-and-out service.⁶⁷ Similarly, Entergy states that in a

⁶³ MISO Answer, Docket No. EL15-66-000 at 21; MISO Answer, Docket No. EL15-77-000 at 20.

⁶⁴ Entergy Protest, Docket No. EL15-66-000 at 17-19.

⁶⁵ *Id.* at 17 (citing KCP&L Protest, Docket No. ER14-148-000 at 8 (filed Nov. 12, 2013) (emphasis added)).

⁶⁶ *Id.* at 18 (citing KCP&L, Request for Rehearing and Clarification, Docket No. EC12-145-000, *et al.* at 9 (filed July 22, 2013)).

⁶⁷ *Id.* (citing Associated Electric Comments, Docket No. EC12-145-000, *et al.* at 6 (filed Jan. 22, 2013)).

request for rehearing filed in the MISO-Entergy Rates Proceeding, Associated Electric noted that MISO classifies Associated Electric's service as drive-through service, and that pursuant to Section 2 of Schedule 7, it will be subject to a single system-wide rate that includes the costs of both planning areas.⁶⁸ Entergy states that Associated Electric also argued that nothing had been proposed to address the cross-subsidization resulting from the fact that drive-through rates under Schedule 7 are based on a single system-wide rate.⁶⁹ Entergy states that, again, Associated Electric did not assert in its protest or request for rehearing that charging an average single system-wide rate was inconsistent with Attachment FF-6, Schedule 7, Attachment O, or the Commission's orders approving Attachment FF-6.⁷⁰

50. MISO argues that Entergy Export Customers never alleged prior to this proceeding that MISO was violating its Tariff by applying its existing Schedules 7 and 26 rates. Further, MISO states that they never raised any concerns through billing disputes despite substantial invoices that they have been receiving since December 2013. MISO argues that the fact that Entergy Export Customers have not advanced their Tariff violation claims until now strongly suggests that these belated claims have been designed to preempt the hearing process and circumvent the retroactive and prospective limits that FPA section 206 imposes on refunds.⁷¹

3. Commission Determination

51. We deny Complainants' requests for relief under section 205 and 309 of the FPA because we find that MISO's assessment of charges under Schedules 26, 7, 8, and 9 comply with its filed rate. We find that the no-cost-sharing cost allocation rules outlined

⁶⁸ *Id.* at 18-19 (citing Associated Electric Request for Rehearing, Docket No. ER12-2681-000 at 3 (filed July 22, 2013)).

⁶⁹ *Id.* at 19 (citing Associated Electric Answer, Docket Nos. ER14-89-000, *et al.* at 10 (filed Dec. 5, 2013) (“All other legacy Entergy customers, besides ‘drive through’ customers under Schedule 7, Section 2, will be charged a zonal rate (including other point-to-point transmission customers with a source or sink in the Entergy footprint) based on the facilities in their specific zone. The only legacy Entergy customers that will be forced to pay rates based on both the MISO and Entergy footprints will be customers, like Associated Electric, that are forced to take service under Schedule 7, Section 2 of the MISO [Tariff].”)).

⁷⁰ *Id.*

⁷¹ MISO Answer, Docket No. EL15-66-000 at 23.

in Attachment FF-6 do not apply to rates for through-and-out transmission service except as permitted under Schedule 26-A for Multi-Value Projects.

52. The cost allocation provisions of Attachment FF-6 make no reference to through-and-out service and do not specify how costs are to be allocated for transmission service reservations that sink outside of MISO. Rather, the Attachment FF-6 provisions apply to “load and/or pricing zones” in the Second Planning Area. For example, Attachment FF-6 provides:

- During the Second Planning Area’s Transition Period, *Load and/or Pricing Zone(s) in the Second Planning Area* shall not be allocated any costs of any [MISO Transmission Expansion Plan] Projects. . . that were approved. . . before the commencement of the Second Planning Area’s Transition Period.⁷²
- During the Second Planning Area’s Transition Period, *Load and/or Pricing Zone(s) in the Second Planning Area* shall not be allocated any costs of any [MISO Transmission Expansion Plan] projects. . . approved . . . during the Second Planning Area’s Transition Period and terminating exclusively in the First Planning Area.⁷³
- After the Second Planning Area’s Transition Period, *Load and/or Pricing Zones(s) in the Second Planning Area* shall not be allocated any costs of any[Baseline Reliability Projects], [Generator Interconnection Projects], [Transmission Delivery Service Projects], or [Market Efficiency Projects] approved. . . during the Second Planning Area’s Transition Period and terminating exclusively in the First Planning Area.⁷⁴

53. Additionally, the MISO-wide single system rates in Schedules 7, 8, and 26, which allocate the non-Multi-Value Project costs to through-and-out service were unchanged by the Entergy Cost Allocation Proceeding. Therefore, the single system-wide rates in these schedules are unaffected by Attachment FF-6. Accordingly, we disagree that the Tariff language supports Complainants’ argument that MISO violated its filed rate.

⁷² MISO Tariff, Attachment FF-6, Section IV.A.1 (emphasis added).

⁷³ *Id.* Section IV.A.2(b)(ii) (emphasis added).

⁷⁴ *Id.* Section IV.B.2(a) (emphasis added).

54. We also disagree with Complainants' assertion that the Second Entergy Cost Allocation Order supports application of the Attachment FF-6 cost allocation provisions to through-and-out transactions. In the First Entergy Cost Allocation Order, the Commission required Tariff revisions explaining how the Schedule 26-A Multi-Value Project usage rate for each Planning Area would apply to export and wheel-through transactions.⁷⁵ However, the Commission did not require further clarifying revisions to Schedule 26 regarding the proposed allocation of the cost of non-Multi-Value Projects.⁷⁶ Arkansas Cooperative protested MISO's compliance filing to the First Entergy Cost Allocation Order, arguing that revisions should also be made to Schedule 26 to ensure that the cost allocation provisions of Attachment FF-6 would apply to export and wheel-through transactions involving non-Multi-Value Projects. In the Second Entergy Cost Allocation Order, the Commission determined that the Arkansas Cooperative's arguments were beyond the scope of the required compliance filing and declined to require further Tariff changes.⁷⁷ However, contrary to Complainants' assertions, the Commission did not make the finding that Attachment FF-6 applies to export and wheel-through transactions "*even if* MISO is not making conforming changes to the relevant rate schedules."⁷⁸ Instead, the Commission simply stated: "we note that Attachment FF-6 contains a thorough description of the allocation of non-[Multi-Value Project] costs, including provisions to ensure that the cost of non-[Multi-Value Projects] approved before or during the five-year transition period should not be shared between the Planning Areas unless the non-[Multi-Value Project] terminates in both Planning Areas."⁷⁹

B. Alternative Request for Relief under FPA Section 206

1. Complaints

55. If the Commission determines that MISO's charges for through-and-out service are permitted by Attachment FF-6, Complainants request that the Commission institute a

⁷⁵ First Entergy Cost Allocation Order, 139 FERC ¶ 61,056 at P 201.

⁷⁶ See Second Entergy Cost Allocation Order, 141 FERC ¶ 61,128 at P 104.

⁷⁷ *Id.* P 108.

⁷⁸ See Entergy Export Customers Complaint at 4 (citing Second Entergy Cost Allocation Order, 141 FERC ¶ 61,128 at P 108 (emphasis in original)).

⁷⁹ Second Entergy Cost Allocation Order, 141 FERC ¶ 61,128 at P 108 (citing MISO Tariff, Attachment FF-6, Section IV.B.6-7).

new FPA section 206 investigation as to whether those charges are just and reasonable. According to Entergy Export Customers, MISO's proposed approach to applying a single regional through-and-out rate is inconsistent with cost causation principles articulated by the Commission in the Entergy Cost Allocation Orders. Morgan Stanley argues that the Schedule 7 charges are inconsistent with cost causation principles because they involve costs for facilities that have not been, and will not be, planned and built for the combined MISO Midwest and MISO South regions. Morgan Stanley adds that the two areas are not directly interconnected and that former Entergy point-to-point customers do not derive a "system-wide" benefit just because Entergy has joined MISO.⁸⁰

56. Morgan Stanley argues that allowing MISO to allocate to the former Entergy customers the costs of MISO Transmission Expansion Plan projects conceived prior to Entergy's integration, who did not cause these facilities to be built, and without any showing of associated benefits, would run contrary to Commission precedent regarding cost causation.⁸¹ For example, Morgan Stanley states that the no-cost-sharing rule is consistent with the U.S. Court of Appeals for the Seventh Circuit's decision in *ICC v. FERC*, where the court invalidated an inter-regional cost allocation where the applicants had failed to provide any empirical justification for the cost allocation. Similarly, Morgan Stanley states that in the Entergy Cost Allocation Proceeding, the applicants did not provide any empirical evidence or justification that the former-Entergy customers received any benefits from the MISO Midwest facilities. Morgan Stanley also points out that in *PJM*, the Commission rejected an argument that certain facilities should be "rolled into" a postage stamp rate in replacement of a license plate rate, which, Morgan Stanley argues, is akin to what MISO has done here. Further, Morgan Stanley states that in *AEP II*, the Commission recognized that mere coordination of generation dispatch across an RTO footprint does not justify forcing a single system-wide rate for transmission service, which, Morgan Stanley argues, is exactly the case from the MISO South region as distinguished from the MISO Midwest region.

57. Morgan Stanley also argues that MISO's cost assessments are unduly discriminatory because MISO is excluding MISO Midwest costs from transmission rates charged to former-Entergy customers that have a sink in MISO South but is not excluding such costs from former-Entergy customers that sink outside of MISO South. Further,

⁸⁰ Morgan Stanley Complaint at 13-14.

⁸¹ *Id.* at 11-15 (citing *ICC v. FERC*, 756 F.3d 556 (7th Cir. 2014) (*ICC v. FERC*); *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063 (2007) (*PJM*), *Am. Elec. Power Serv. Corp. v. Midwest Indep. Trans. Sys. Operator, Inc.*, 122 FERC ¶ 61,083, order on reh'g, 125 FERC ¶ 61,341 (*AEP II*) (2008); *Midwest Indep. Trans. Sys. Operator, Inc.*, 117 FERC ¶ 61,241 (2006) (*MISO*)).

Morgan Stanley states that MISO is treating customers that sink in SPP differently than those that sink in PJM Interconnection, L.L.C. (PJM) because customers with a sink in PJM are charged the same rates as customers with internal MISO sinks.⁸²

58. If the Commission establishes a new section 206 investigation, Entergy Export Customers request that such proceeding be consolidated with regional through-and-out rate issues in the MISO-Entergy Rates Proceeding pending in Docket Nos. ER13-948-000, *et al.* However, Morgan Stanley requests that the Commission institute the FPA section 206 investigation in a separate proceeding.

59. Entergy Export Customers state that, because their arguments are presented in the context of an FPA section 206 proceeding for the first time in the instant complaint, FPA section 206 requires the Commission to set a new refund effective date. Entergy Export Customers cite *ENE v. Bangor Hydro-Electric Co.* for the proposition that the preexistence of similar FPA section 206 proceedings does not override FPA section 206's plain language requiring the Commission to set a new refund effective date with new refund periods when new arguments are advanced.⁸³

2. Responsive Pleadings

a. Refund Relief

60. MISO, Entergy, and the MISO Transmission Owners argue that the issue of the justness and reasonableness of the Schedules 7 and 8 through-and-out rates is already pending in the MISO-Entergy Rates Proceeding and should be resolved in that proceeding. MISO and Entergy contend that Complainants filed a duplicative complaint almost exactly 15 months after the refund effective date established in the Rates Rehearing Order in order to extend the refund protection beyond what is permitted by law.⁸⁴ The MISO Transmission Owners add that allowing the complaints to proceed

⁸² *Id.* at 16-17.

⁸³ Entergy Export Customers Complaint at 39 n. 114 (citing *ENE v. Bangor Hydro-Electric Co.*, 151 FERC ¶ 61,125 (2015) (*ENE*)).

⁸⁴ MISO Answer, Docket No. EL15-66-000 at 23-25; MISO Answer, Docket No. EL15-77-000 at 28-29; Entergy Protest, Docket No. EL15-66-000 at 28; Entergy Protest, Docket No. EL15-77-000 at 24-25.

would condone an attempt to circumvent congressionally-imposed limitations on the refund effective period for complaints brought under FPA section 206.⁸⁵

61. Entergy asserts that, under the Regulatory Fairness Act, absent dilatory behavior by the utility, refund protection for customers under FPA section 206 is limited to a single 15-month period.⁸⁶ Entergy points out that Complainants do not allege that MISO or any MISO transmission owner has engaged in dilatory behavior in that proceeding.⁸⁷ Entergy and the MISO Transmission Owners also state that the Commission rejects complaints that merely seek to relitigate the same issues raised in a prior case when the complainant does not present new analysis, new circumstances, or new, more current data.⁸⁸ Entergy maintains that Complainants have not presented any new analysis or data.⁸⁹

62. Regarding Entergy Export Customers' Tariff violation claims (described above in section IV.A.2), MISO argues that the fact that Entergy Export Customers have not advanced their Tariff violation claims until now strongly suggests that these belated claims have been designed to preempt the hearing process and circumvent the retroactive and prospective limits that FPA section 206 imposes on refunds.

63. Entergy states that Complainants only identify two charges that they specifically argue are inconsistent with the MISO Tariff – the charges under Schedules 7 and 26.

⁸⁵ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 33-34; MISO Transmission Owners Answer, Docket No. EL15-66-000 at 28.

⁸⁶ Entergy Protest, Docket No. EL15-77-000 at 25 (citing Pub. L. No., 100-473, 102 Stat. 2299 (1988); 16 U.S.C. § 824e(b)); Entergy Protest, Docket No. EL15-77-000 at 28-29 (citing same).

⁸⁷ Entergy Protest, Docket No. EL15-66-000 at 5; Entergy Protest, Docket No. EL15-77-000 at 5.

⁸⁸ Entergy Protest, Docket No. EL15-77-000 at 28 (citing *EPIC Merchant Energy NJ/PA, L.P.*, 131 FERC ¶ 61,130, at P 20 (2010), *reh'g denied*, 136 FERC ¶ 61,041 (2011) (*EPIC Merchant Energy*)); MISO Transmission Owners Answer, Docket No. EL15-77-000 at 25 (citing *EPIC Merchant Energy*, 131 FERC ¶ 61,130; *People of the State of California, ex rel. Edmund G. Brown, Jr. v. Powerex Corp.*, 135 FERC ¶ 61,178, at P 72 (2011) (*California*)).

⁸⁹ Entergy Protest, Docket No. EL15-77-000 at 28; Entergy Protest, Docket No. EL15-66-000 at 5.

Entergy therefore argues that Complainants' request for refunds should be limited to charges under those schedules.⁹⁰

b. Cost Causation Arguments

64. MISO Transmission Owners and Entergy contend that Morgan Stanley relies on inapposite precedent to support its claims regarding cost causation. For example, MISO Transmission Owners state that *ICC v. FERC* never addressed whether system-wide rates for export customers, like Morgan Stanley, were just and reasonable.⁹¹ Similarly, MISO Transmission Owners contend that the decisions in *PJM*, *AEP II*, and *MISO* never addressed the validity of system-wide rates for export and wheel-through customers.⁹² Entergy further notes that in *AEP II*, the Commission rejected an argument that zonal rates should be changed to a system-wide rate for transactions that cross RTOs but that for pricing purposes are treated the same as transactions that source and sink entirely in one RTO. Entergy maintains that as a result, each RTO continued to charge zonal rates for transmission services considered internal to the RTO and system-wide rates for transmission services treated as through-and-out service.⁹³

65. MISO and Entergy point out that, prior to Entergy's integration into MISO, Complainants' service was limited to the Entergy transmission system; now, however, Complainants may redirect points of receipt or delivery on a region-wide basis. They assert that the increased charges reflect these benefits of scope, as well as many other unique, defined benefits that a Day-2 market provides to its customers. Entergy adds that Complainants now can sell energy to a load-serving entity in the First Planning Area without paying multiple transmission charges. Entergy states that in the past, the Commission has explained that the scope of through-and-out service in RTOs justifies the

⁹⁰ Entergy Protest, Docket No. EL15-66-000 at 10.

⁹¹ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 35-36 (citing *ICC v. FERC*, 756 F.3d 556).

⁹² *Id.* at 35-36 (citing *PJM*, 119 FERC ¶ 61,063; *AEP II*, 122 FERC ¶ 61,083; *MISO*, 117 FERC ¶ 61,241).

⁹³ Entergy Protest, Docket No. EL15-66-000 at 37; Entergy Protest, Docket No. EL15-77-000 at 34.

use of a system-wide rate for such service, and Complainants have failed to provide a legitimate reason not to apply that policy here.⁹⁴

66. Entergy disputes the comparison Complainants make with regard to an increase in charges for long-term firm point-to-point transmission service. Complainants allege that before the Entergy Operating Companies integrated into MISO, the charges for long-term firm point to point transmission service amounted to \$1.78/kW-month, whereas Complainants state that the charges are now equal to \$3.45/kW-month. Entergy states that this comparison is not pertinent here, as Complainants are making a comparison to the Entergy Tariff prior to the Entergy Operating Companies' integration in MISO. At most, Entergy argues that the fairest comparison is between a charge of \$2.23/kW-month for through-and-out service, if that rate were based solely on the Entergy transmission system, and \$3.10/kW-month, which is the combined rate under Schedules 7 and 26 for through-and-out service.⁹⁵

67. MISO, MISO Transmission Owners, and Entergy argue that Morgan Stanley fails to account for the elimination of its pancaked rate arrangement due to Entergy's integration into MISO. MISO Transmission Owners contend that transmission charges for transactions under Morgan Stanley's transmission service agreement would have been higher had Entergy not joined MISO, thus making Morgan Stanley's claims of price increases and experienced harm misleading.⁹⁶

68. Finally, MISO Transmission Owners contend that Morgan Stanley knew in advance about Entergy's forthcoming integration into MISO when it signed its transmission service agreement in February of 2013, thus making Morgan Stanley's claims of unexpected application of MISO rates unfounded.

⁹⁴ Entergy Protest, Docket No. EL15-66-000 at 5, 35 (citing *PJM Interconnection, L.L.C.*, 109 FERC ¶ 61,012 (*PJM/Dominion*), *order on reh'g*, 110 FERC ¶ 61,234 (2005)).

⁹⁵ Entergy Protest, Docket No. EL15-66-000 at 9-10; Entergy Protest, Docket No. EL15-77-000 at 9-11.

⁹⁶ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 13, 25. MISO Transmission Owners note that, while they do not have access to Morgan Stanley's invoices or remittances, a straightforward reading of Morgan Stanley's transmission service agreement and applicable tariff provisions demonstrate that Morgan Stanley's transaction costs are almost certainly lower than they would have been had Entergy not joined MISO. *Id.* at 25.

c. Undue Discrimination

69. MISO and Entergy state that the purpose of applying an average system-wide rate to through-and-out service is to treat all competitors for a specific load the same. In MISO's view, Complainants are asking the Commission to grant them a preferential rate not available to other similarly-situated customers.⁹⁷ Entergy adds that if different customers received different rates for through-and-out service, as Complainants seek, the goal to treat all competitors seeking to serve load outside of MISO the same would be undermined.⁹⁸

70. MISO Transmission Owners and Entergy contend that the Commission already determined in the MISO-Entergy Rates Order that application of system-wide rates to export and wheel-through customers is not unduly discriminatory.⁹⁹ Entergy states that the Commission explained that through-and-out service differs from service to loads within MISO, and therefore the rates for those services do not need to be the same.¹⁰⁰ Entergy states that because all transmission customers that take through-and-out service from MISO are charged the same rate, comparability is assured.¹⁰¹

71. MISO Transmission Owners also argue that Morgan Stanley fails to support its claim of discrimination against SPP-sinking transactions.¹⁰² MISO Transmission Owners

⁹⁷ MISO Answer, Docket No. EL15-66-000 at 28; MISO Answer, Docket No. EL15-77-000 at 31.

⁹⁸ Entergy Protest, Docket No. EL15-66-000 at 38.

⁹⁹ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 40 (citing MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 171); Entergy Protest, Docket No. EL15-66-000 at 25-26 (citing same); Entergy Protest, Docket No. EL15-77-000 at 35 (citing same).

¹⁰⁰ Entergy Protest, Docket No. EL15-66-000 at 39 (citing MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 171; *PJM/Dominion*, 109 FERC ¶ 61,012 at P 37 (rejecting claim of undue discrimination)); Entergy Protest, Docket No. EL15-77-000 at 35 (citing same).

¹⁰¹ *Id.* (citing MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 171); Entergy Protest, Docket No. EL15-77-000 at 36 (citing MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 171).

¹⁰² MISO Transmission Owners Answer, Docket No. EL15-77-000 at 41.

add that Morgan Stanley's argument on this point is oddly misplaced given that Morgan Stanley's transmission service agreement sinks in Southern Company, which is not a part of SPP or any RTO.

d. Procedural Deficiency of the Complaints

72. MISO asserts that Morgan Stanley has failed to include invoices comparing its costs before and after Entergy's integration into MISO, as well as other supporting documentation, thereby failing to provide a "good faith estimate" of its alleged "rate increase," creating both a procedural barrier to its complaint and a substantive deficiency demonstrating that Morgan Stanley has not established its *prima facie* case required under FPA section 206.¹⁰³ MISO Transmission Owners add that Morgan Stanley's failure to provide adequate documentation frustrates the parties' ability to respond to allegations in the Complaint, and that the Commission has dismissed complaints that fail to include adequate documentation.¹⁰⁴

73. MISO Transmission Owners argue that it would be contrary to Commission policy to reward Morgan Stanley when it has consistently failed to participate in relevant proceedings and is raising duplicative matters that the Commission has elsewhere set for hearing. MISO Transmission Owners assert that Morgan Stanley is a sophisticated entity and repeat player in proceedings before the Commission that avoided participating in numerous proceedings related to Entergy's integration into MISO.¹⁰⁵ MISO Transmission Owners allege that Morgan Stanley sat on its rights until a new opportunity – the Entergy Export Customers Complaint – revealed a means for Morgan Stanley to further reduce its costs. MISO Transmission Owners assert that Commission policy disfavors relitigation of issues that were, or could have been, addressed in earlier proceedings.¹⁰⁶ MISO Transmission Owners state that in the absence of a demonstration

¹⁰³ MISO Answer, Docket No. EL15-77-000 at 24-25.

¹⁰⁴ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 14-15 (citing, e.g., *Chevron Prods. Co. v. SFPP, L.P.*, 99 FERC ¶ 61,196, at 61,816 (2002)).

¹⁰⁵ *Id.* at 27-34. See also Entergy Answer, Docket No. EL15-77-000 at 31 (noting that Morgan Stanley had ample opportunity to intervene as a participant in the MISO-Entergy Rates Proceeding).

¹⁰⁶ *Id.* at 29 (citing *ISO New England, Inc.*, 123 FERC ¶ 61,290 (2008), *remanded on other grounds sub nom. PSEG Energy Resources & Trade LLC v. FERC*, 665 F.3d 203 (D.C. Cir. 2011); *NSTAR Elec. Co. v. ISO New England, Inc.*, 120 FERC ¶ 61,261, at P 33 (2007); *Alamito Co.*, 43 FERC ¶ 61,274, at 61,753 (1988), *denying reconsideration and granting clarification of* 41 FERC ¶ 61,312 (1987)).

that Entergy Export Customers will be unable to obtain relief in Docket No. EL14-19-000 or that there has been a material change in circumstances warranting a new complaint, Commission precedent dictates that the Entergy Export Customers Complaint must be denied.¹⁰⁷

74. MISO, MISO Transmission Owners, and Entergy claim that the FPA section 206 investigation in Docket No. EL14-19-000 does not encompass the through-and-out rate in Schedule 26. However, they argue that any attempt to challenge the Schedule 26 through-and-out rate in the instant proceeding is an impermissible collateral attack on the Commission's determinations in the Entergy Cost Allocation Proceeding and the MISO-Entergy Rates Proceeding.¹⁰⁸ Entergy states that the Commission should reject Complainants' attempt to raise issues related to Schedule 26 here as contrary to sound administrative practice.¹⁰⁹ Entergy states that Complainants have had ample opportunity to raise concerns related to Schedule 26 but have failed to preserve their arguments in the appropriate dockets. MISO Transmission Owners argue that circumstances have not materially changed with regard to Schedule 26 or supporting calculations in Attachments GG and FF-6, and therefore a revisiting of the Commission's decision is not warranted.¹¹⁰

3. Commission Determination

75. We deny Complainants' alternative request for an FPA section 206 investigation regarding the Schedules 7, 8, and 26 through-and-out rates because we find that the justness and reasonableness of these rate schedules are already being addressed in the section 206 proceeding established in Docket No. EL14-19-000, which was consolidated with the MISO-Entergy Rates Proceeding. We therefore will not address Complainants'

¹⁰⁷ MISO Transmission Owners Answer, Docket No. EL15-66-000 at 24-25.

¹⁰⁸ See MISO Answer, Docket No. EL15-66-000 at 26-27; MISO Answer, Docket No. EL15-77-000 at 22-23; MISO Transmission Owners Answer, Docket No. EL15-77-000 at 29-30; MISO Transmission Owners Answer, Docket No. EL15-66-000 at 29-32; Entergy Answer, Docket No. EL15-77-000 at 30-31; Entergy Answer, Docket No. EL15-66-000 at 33-35.

¹⁰⁹ Entergy Protest, Docket No. EL15-66-000 at 5; Entergy Protest, Docket No. EL15-77-000 at 6.

¹¹⁰ MISO Transmission Owners Answer, Docket No. EL15-77-000 at 30 (citing *Cent. Vt. Pub. Serv. Corp.*, 123 FERC ¶ 61,128, at P 35 (2008)); MISO Transmission Owners Answer, Docket No. EL15-66-000 at 31.

arguments regarding cost causation and undue discrimination with respect to these through-and-out rates.

76. MISO, Entergy, and MISO Transmission Owners contend that the FPA section 206 investigation in Docket No. EL14-19-000 encompasses the through-and-out rate in Schedules 7 and 8, but not the Schedule 26 rate because, according to MISO, no parties in the MISO-Entergy Rates Proceeding referenced Schedule 26 in their protests regarding regional through-and-out rate issues.¹¹¹ We disagree with the assertion that Schedule 26 is not encompassed in Docket No. EL14-19-000. In the MISO-Entergy Rates Proceeding, Associated Electric raised concerns about the point-to-point transmission rates across Entergy's transmission system (now MISO South) and requested that the Commission confirm that ITC and MISO would apply the Entergy transition plan for both Multi-Value Project and non-Multi-Value Project network upgrade costs, which would include the Schedule 26 through-and-out rate charge.¹¹² The Commission initially denied Associated Electric's request as beyond the scope of the MISO-Entergy Rates Proceeding¹¹³ but subsequently reconsidered this finding in the Rates Rehearing Order, stating: "Upon further consideration, we find that MISO's proposed regional through-and-out rate 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."¹¹⁴ Because Schedule 26 addresses through-and-out-rates, the issues set for hearing included the MISO-wide single-system through-and-out rates contained in Schedules 7, 8, and 26.

77. Commission precedent prohibits the filing of successive complaints that seek to re-litigate the same issue absent new evidence or changed circumstances. For example, in *Allegheny Electric Cooperative v. Niagara Mohawk Power Corp.*,¹¹⁵ the Commission dismissed a complaint that was identical in all relevant aspects to another complaint filed three weeks earlier that raised no new factual or legal allegations but was instead

¹¹¹ MISO Answer, Docket No. EL15-66-000 at 26.

¹¹² MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 168; Associated Electric Protest, Docket No. ER12-2681-000 at 5-6 (filed Jan. 22, 2013).

¹¹³ MISO-Entergy Rates Order, 143 FERC ¶ 61,257 at P 171.

¹¹⁴ Rates Rehearing Order, 146 FERC ¶ 61,111 at P 75.

¹¹⁵ *Allegheny Electric Cooperative, Inc. v. Niagara Mohawk Power Corp.*, 58 FERC ¶ 61,096, at 61,349 (1992).

intended to thwart Congress' intent in establishing the limited 15-month refund protection period if different refund effective dates were established. Similarly, in *EPIC Merchant Energy*,¹¹⁶ the Commission rejected a second complaint filed over two years after the first complaint where second complainant sought to re-litigate the same issues raised in the prior complaint, citing no new evidence or changed circumstances, and a second refund date was unnecessary because relief was already granted for the period after the second complaint was filed. Further, in *California* the Commission rejected a request to open a new complaint proceeding responding to issues already being addressed in another proceeding, and otherwise found that the relief requested was not available because it was time-barred under FPA section 206, and the complainant was not entitled to the requested relief under FPA section 309.¹¹⁷ Like the complainants in those cases, Entergy Export Customers and Morgan Stanley are attempting to re-litigate issues that are being addressed elsewhere without presenting any new evidence or changed circumstances. Therefore, we agree with MISO and protestors that the instant complaints are duplicative and do not justify an extension of the 15-month refund period established in Docket No. EL14-19-000.

78. We are unpersuaded by Morgan Stanley's argument that a new complaint is justified due to different factual circumstances. According to Morgan Stanley, these new facts include: (1) the assessment of actual charges by MISO (as opposed to other proceedings that were initiated before the Entergy integration); and (2) the failure of the Entergy-ITC Transaction to close. However, contrary to these representations, the current factual environment is in fact unchanged from the Rates Rehearing Order instituting the FPA section 206 investigation because, at that time: (1) Entergy had already integrated into MISO as of December 19, 2013, such that Complainants had become subject to actual charges for through-and-out transmission; and (2) Complainants and the Commission were on notice that the Entergy-ITC Transaction had failed.¹¹⁸

79. Similarly unavailing is the assertion that a new refund effective date is warranted because this is the first opportunity Complainants have had to raise their arguments in the current factual environment (i.e., after Entergy's integration into MISO and after the Entergy-ITC Transaction had failed). The parties to the Docket No. EL14-19-000 FPA section 206 proceeding, which include Entergy Export Customers, will have the

¹¹⁶ *EPIC Merchant Energy*, 131 FERC ¶ 61,130 at P 20.

¹¹⁷ *California*, 135 FERC ¶ 61,178 at P 71.

¹¹⁸ The Notice of Termination was filed prior to the Rates Rehearing Order. See n.19, *supra*.

opportunity to present their arguments in that proceeding.¹¹⁹ Moreover, Complainants have not cited any changed circumstances that would affect consideration of the issue set for hearing in Docket No. EL14-19-000 and the issue Complainants seek to raise here, which is whether the through-and-out rates are just and reasonable.

80. Although the Commission has allowed successive return on equity (ROE) complaints,¹²⁰ those cases are distinguishable from the instant complaints. For example, in accepting a second complaint concerning the MISO ROE, the Commission noted that it has previously allowed successive complaints where there is a new analysis.¹²¹ The Commission found that the complainants in that second MISO ROE case submitted a new, updated discounted cash flow analysis, resulting in a different ROE. The just and reasonable ROE can change over time, as can the just and reasonable level for any fixed or stated rate component, and analyses of data for different test periods can support different ROEs. By contrast, in the instant complaints, the issue is the justness and reasonableness of the MISO regional through-and-out rate *methodology*, as applied to determine charges for customers that had traditionally used only Entergy facilities for their through-and-out service. Complainants argue that the MISO regional through-and-out rates as applied to their transactions are unjust and unreasonable for essentially the same legal and policy reasons that caused the Commission to establish the proceeding in Docket No. EL14-19-000. Complainants allege that the rate is unjust and unreasonable based on an increase in recent billings. However, we find that this does not constitute a

¹¹⁹ Morgan Stanley had the opportunity to intervene in Docket No. EL14-19-000 but did not seek to do so.

¹²⁰ See *Golden Spread Electric Cooperative, Inc. v. Southwestern Public Service Co.*, 151 FERC ¶ 61,126 (2015) (allowing new complaint because it was based on financial data from a different six-month period and produced a different proxy group, which constituted different factual circumstances); see also *ENE v. Bangor Hydro-Electric Co.*, 151 FERC ¶ 61,125 (2015).

¹²¹ *Arkansas Elec. Coop. Corp. v. ALLETE, Inc.*, 151 FERC ¶ 61,219, at P 49 (2015) (citing *Consumer Advocate Div. of the Pub. Serv. Comm'n of W.V.*, 67 FERC ¶ 61,288, at 62,000 (1994) (*Consumer Advocate I*); *Southern Co. Servs., Inc.*, 68 FERC ¶ 61,231 (1994) (*Southern Co. I*), order on reh'g, 83 FERC ¶ 61,079 (1998) (*Southern Co. II*); see also *San Diego Gas & Elec. v. Public Serv. Co. of New Mexico*, 85 FERC ¶ 61,414 (1998), reh'g denied, 86 FERC ¶ 61,253 (1999), reh'g denied, 95 FERC ¶ 61,073 (2001). But see *EPIC Merchant Energy*, 131 FERC ¶ 61,130 (rejecting the “pancaked” complaint, by distinguishing it from the complaints in *Consumer Advocate I*, *Southern Co. II*, and *San Diego Gas & Elec*)).

new argument, and it does not change their fundamental argument as to why they believe that the rate is unjust and unreasonable (i.e., that the regional through-and-out rate *methodology*, as applied to their transactions, violates cost causation principles), which is the same issue being investigated in Docket No. EL14-19-000.¹²²

C. MISO and SPP Seams Issues

1. Arkansas Cooperative's Comments

81. Arkansas Cooperative argues that the concerns raised by Entergy Export Customers and Morgan Stanley could be mitigated by the Commission addressing the RTO scope and configuration requirements.¹²³ In particular, Arkansas Electric states that Entergy's integration into MISO was undertaken without a determination that the configuration of the enlarged MISO would "internalize loop flow" or "eliminate[e] pancaked transmission rates within the broadest possible energy trading area," as required by Order No. 2000.¹²⁴ Whether addressed in this docket as a means to mitigate Complainants' concerns or in an entirely new docket, Arkansas Cooperative requests that the Commission: (1) order MISO and SPP to eliminate rate pancaking for transactions that cross the seam between MISO and SPP; and (2) order MISO and SPP to modify their joint planning process to specifically address the needs of entities that must serve load on both sides of the SPP/MISO seam.

2. Commission Determination

82. We dismiss Arkansas Cooperative's concerns as to loop flow and pancaked transmission rates as beyond the scope of this proceeding. These concerns were not raised by the Complainants, and this case is not the proper forum to address these concerns.

¹²² Parties in the MISO-Entergy Rates Proceeding indicated the magnitude of the expected increase in their rates due to the MISO regional through-and-out rate. However, there is nothing in the instant complaints indicating that the impact that has been experienced has been different than parties expected in those earlier pleadings.

¹²³ Arkansas Cooperative Comments, Docket No. EL15-77-000 at 4; Arkansas Cooperative Comments, Docket No. EL15-66-000 at 3-4.

¹²⁴ Order No. 2000, FERC Stats. & Regs. ¶ 31,089.

The Commission orders:

The Complaints filed by the Entergy Export Companies and Morgan Stanley are hereby denied, as discussed in the body of this order.

By the Commission. Commissioner Honorable is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.