

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midwest Independent Transmission)
System Operator, Inc.)

Docket No. ER10-1791-003

REPLY COMMENTS OF THE ORGANIZATION OF MISO STATES

Pursuant to the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) *Order Establishing Paper Hearing Procedure* issued on January 22, 2015,¹ and the Notice issued on February 26, 2015, establishing July 22, 2015, as the deadline for parties in this proceeding to file reply briefs, the Organization of MISO States (“OMS”) respectfully submits the following Reply Comments in the above captioned docket.

I. Background

On January 22, 2015, the Commission established a paper hearing in response to the United States Court of Appeals for the Seventh Circuit’s (“Seventh Circuit”)² opinion remanding to the Commission for determination, in light of current conditions, of what if any limitations on export pricing to PJM Interconnection, L.L.C (“PJM”) for Multi-Value Projects (“MVPs”) by MISO is justified.³

On April 22, 2015, the OMS submitted Initial Comments in this proceeding, reiterating its support for long-standing Commission “cost causation principles” and asserting that any limitations on export costs to PJM should be line with those long-standing and uncontroversial

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 150 FERC ¶ 61,026 (2015) (“Remand Order”).

² *Ill. Commerce Comm’n v. FERC*, 721 F.3d 764, 778-80 (7th Cir. 2013) (“*ICC I*”), *cert. denied*, 134 S.Ct. 1277 (2014), *cert. denied*, 134 S.Ct. 1278 (2014). *ICC II* generally affirmed the Commission orders issued in Docket Nos. ER10 1791-000, et al.: *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (“MVP Order”), *order on reh’g and compliance filing*, 137 FERC ¶ 61,074 (2011) (“MVP Rehearing Order”) (collectively the “MVP Orders”).

³ Remand Order at P 11.

principles.⁴ In these reply comments, the OMS addresses portions of the initial comments filed by certain PJM Transmission Owners (“Indicated PJM TOs”),⁵ American Municipal Power, Inc., and the Illinois Commerce Commission.

In their initial briefs, several commenters argue that the Commission should reaffirm its prior ruling rejecting the Midcontinent Independent System Operator, Inc. (“MISO”) and certain MISO Transmission Owners⁶ (collectively, the “MISO Parties”) proposed MVP usage rate (“MUR”) on exports into PJM. They claim that extending the MUR to such transactions would, among other things, constitute a resumption of impermissible rate pancaking and an involuntary assignment of regional transmission costs, circumvent the PJM-MISO Joint Operation Agreement’s (JOA) interregional transmission planning and cost allocation provisions, and violate Commission precedent requiring joint planning in order to regionally allocate the costs of new transmission facilities.

In addition to these substantive claims, one commenter alleges the Commission is barred from deciding this issue on the merits for procedural reasons. These commenters claim that in order to impose the MUR on exports to PJM, the Federal Power Act (“FPA”) prohibits the Commission from deciding the question remanded to it in this docket. The commenters claim the MISO Parties must instead initiate an entirely new proceeding before the Commission can decide whether the FPA, the aforementioned cost allocation principles, and other relevant judicial and

⁴ OMS Initial Comments, Docket No. ER10-1791-003 (April 22, 2015). OMS argued that this principle should not apply *only* when the parties have agreed to some other cost sharing agreement and said agreement is specific and time-limited. For example, the Entergy utilities in the MISO South region negotiated, as part of their MISO membership, a 5-year transition period during which MVP project costs from the North and Central regions would not be allocated. This is a very specific, time-limited provision that can be distinguished from the Commission’s decision directed at PJM. OMS does not advocate altering that agreement in any way.

⁵ See Indicated PJM TOs Comments, Docket No. ER10-1791-003 (April 22, 2015), at n. 2 (listing the PJM TOs taking part in the filing).

⁶ See MISO Parties Initial Comments, Docket No. ER10-1791-003 (April 22, 2015), at n. 2 (listing the MISO TOs participating in the filing).

regulatory precedent requires all users of the MISO transmission system to contribute the cost of new transmission facilities from which they benefit.

II. Argument

As shown below, each of the commenters' substantive arguments ignore current conditions and contradict prior Commission and judicial rulings. Moreover, the commenter's procedural arguments are without merit and contrary to prior Commission rulings. The Commission should reject these arguments and find that current conditions dictate that all users of the MISO transmission system, including those exporting energy from or through MISO to PJM, pay for the benefit MVPs provide.

A. Imposing the MUR on PJM Exports is Not an Involuntary Assignment of Regional Transmission Costs Because the Rate Only Applies to Customers Taking Service from MISO

In their Initial Comments, the Indicated PJM TOs allege that imposing the MUR on PJM exports violates a Commission Order No. 1000⁷ directive forbidding any region from imposing involuntary transmission development costs upon another.⁸ This Commission has heard and rejected this interpretation of Order 1000.

When Exelon offered the very same interpretation of Order 1000 earlier in these same proceedings, FERC concluded imposing the MUR on exports and wheel—through transactions *does not* constitute an involuntary assignment of costs. In its original MVP Order,⁹ FERC expressly noted that “there is no involuntary assignment of costs here given that the [MUR]

⁷ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Pub. Utils.*, 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 clarif.*, 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).

⁸ Indicated PJM TO Owners Initial Comments, Docket No. ER10-1791-003 (April 22, 2015), at 34-35 (quoting Order No. 1000 at P 675 (adopting Inter-Regional Cost Allocation Principle no. 4)).

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61221 (Dec. 16, 2010) (MVP Order).

applies to export and wheel-through transactions (i.e., customers that are taking service from [MISO]), rather than an external entity taking no service or buying no energy from [MISO], which would not be charged under this proposal).”¹⁰ Simply put, imposing the MUR on export and wheel-through transactions, *including those sinking in PJM*, does not equate to an involuntary assignment of costs.¹¹

The Commission premised this ruling on a factual finding upheld by the Seventh Circuit – all users of the MISO transmission system benefit from MVPs:

[MVPs] support *all* uses of the system, including transmission on the system that is ultimately used to deliver to an external load, and benefit *all* users of the integrated transmission system, regardless of whether the ultimate point of delivery is to an internal or external load ... By “external” read PJM or any other recipient of electricity that is outside MISO.¹²

Thus, the Indicated PJM Transmission Owners assertion that assignment of MUR on exports and wheel-through transactions from MISO is in violation of the Commission’s Order No. 1000 is patently contrary to prior Commission precedent – applying the MUR on exports and wheel-through transactions, whether they are bound for PJM or other external regions, does not constitute an involuntary assignment of regional transmission costs in violation of Order No. 1000.

B. The MISO-PJM JOA Does Not Prohibit the Imposition of MUR on Exports to PJM.

The MISO-PJM JOA’s inter-regional planning processes is not the sole avenue for MISO and PJM to allocate the costs of transmission facilities built between or within one region that benefits the both regions. As this Commission found earlier in this same docket, the

¹⁰ MVP Order at P 439.

¹¹ Notably, no party sought rehearing on this matter or challenged the Commission’s decision before the Seventh Circuit Court of Appeals.

¹² *ICC II* at 779-80 (quoting MVP Order at ¶ 439) (internal citations omitted and emphasis added).

Indicated PJM Owners' argument that the MISO-PJM is the sole avenue for allocating such costs is without merit.

The Indicated PJM TOs' arguments that extending the MUR on exports into PJM violates Commission precedent regarding the MISO-PJM JOA's inter-regional planning provisions are without merit. The MISO-PJM JOA – like any agreement between two parties – is limited in scope and matters not directly addressed therein are not implicitly included.¹³

Moreover, the Commission has already rejected this argument. Previously in this docket, Exelon claimed that MISO's Open Access Transmission, Energy & Operating Reserve Market Tariff ("Tariff") and prior Commission Orders require (a) that projects in MISO which provide benefit to PJM must be planned in concert with PJM,¹⁴ and (b) that the cost allocation methodology associated with such projects must be incorporated into the PJM-MISO JOA.¹⁵ However, as the Commission stated in the MVP Rehearing Order, these arguments are "without merit."¹⁶ While the MISO-PJM JOA contains provisions concerning the joint study and cost allocation of specific types of transmission expansion projects (e.g., Cross-Border Baseline Reliability Projects), that fact alone does not mean that MISO's MVP proposal circumvents the JOA. In fact, the limited scope of the JOA supports the premise that the MVP proposal is a separate and distinct set of projects and costs that are outside of the JOA and therefore cannot be found to circumvent the agreement. Further, the Commission went on to find that the MVP

¹³ See, e.g., *Moriarty v. Svec*, 164 F. 3d 323, 330-31 (7th Cir. 1998) ("If the contract is susceptible to only one reasonable interpretation, it is unambiguous and the court should determine its meaning as a matter of law."); *Hashwani v. Barbar*, 822 F. 2d 1038, 1040 (11th Cir. 1987) ("[T]he plain language must control where there is no ambiguity, and this Court will not rewrite the agreement to make it more favorable to the defendant than the agreement he signed.") (Internal citations omitted).

¹⁴ Indicated PJM TO Initial Comments at 37-39.

¹⁵ Exelon Request for Rehearing at 8-10, FERC Docket No. 10-1791-000 (Jan. 18, 2011).

¹⁶ MVP Rehearing Order at ¶ 262.

Proposal would also not inappropriately prevent the application of the JOA's more general provisions.¹⁷

The Indicated PJM TOs have not offered any new evidence that would suggest the MISO-PJM JOA is the sole avenue for allocating the costs of beneficial transmission between MISO and PJM. The Commission should rule as it did before, and find this argument is without merit.

C. Imposing the MUR on Exports to PJM Does Not Constitute an Impermissible Resumption of Pancaked Rates

As mentioned earlier and more extensively in MISO Parties' Initial Comments,¹⁸ the "cost causation principles" require *all* users of the MISO transmission system to pay the MUR, including those moving energy from or through MISO to PJM. More importantly, imposing the MUR on such transactions does not violate the Commission's Anti-Pancaking Orders,¹⁹ because MVPs are newly built transmission projects, benefiting all uses of the MISO transmission system, and not existing locally planned transmission facilities.²⁰ "The requirement of proportionality between costs and benefits requires that all beneficiaries... including users in PJM... shoulder a reasonable portion of MVP costs."²¹

FERC adopted the Anti-Pancaking Orders to address existing local transmission facilities, not newly constructed facilities that provide regional and interregional benefits.²² FERC mandated the elimination of through and out rates with respect to existing transmission

¹⁷ *Id.*

¹⁸ See MISO Parties Initial Comments at 10-19.

¹⁹ The Anti-Pancaking Orders are (in order of issuance): Alliance Cos., 100 FERC ¶ 61,137 (2002), order on clarification, 102 FERC ¶ 61,214, order on reh'g & clarification, 103 FERC ¶ 61,274 (2003); Midwest Indep. Transmission Sys. Operator, Inc., 102 FERC ¶ 63,049 (Administrative Law Judge Initial Decision), modified by, 104 FERC ¶ 61,105, at P 35, order on reh'g, 105 FERC ¶ 61,212 (2003).

²⁰ See, e.g., MVP Order at ¶¶ 194, 439 and 443.

²¹ *ICC II* at 780.

²² See MISO Parties Initial Comments at 21 – 24 (outlining the Commission's rate-pancaking precedent).

facilities, but required RTOs and their transmission owners to develop cost allocation methodology for the construction of new transmission facilities. “The Commission has subsequently found it appropriate to charge certain MISO planning and market costs to exports, including exports to PJM, notwithstanding the Anti-Pancaking Orders, because those transactions benefit from MISO markets and services.”²³

Although they were developed through the MISO Transmission Expansion Plan (“MTEP”) process, MVPs represent major additions to the MISO transmission system that benefit all users. MVPs are designed to provide regional benefits through the facilitated movement of renewable power across the MISO system to all users of the system regardless of the location of the load, including those in PJM.²⁴ As such, they are fundamentally different from the locally planned transmission facilities addressed in the Anti-Pancaking Orders.

MURs are structured around a cost causation analysis and not the FERC Anti-Pancaking Orders. The cost causation principle states that costs are allocated to the parties who cause the incurrence of such costs, including those who cause costs to be incurred and those who otherwise benefit from them. MVPs “improve system reliability, reduce congestion, satisfy documented energy policy mandates or laws, and enhance market efficiency, which would benefit all users of the integrated transmission system, regardless of whether the ultimate point of delivery is to an internal or external load.”²⁵ As FERC initially found and the Seventh Circuit affirmed, all users of the MISO transmission system benefit from MVPs’ construction, including those moving energy through or from MISO to PJM.²⁶ No party to these proceedings have presented evidence to that would negate this factual finding or the Seventh Circuit’s conclusion that MVPs “are new

²³ MISO Parties Initial Comments at 22.

²⁴ *See, e.g.*, OMS Initial Comments at 1.

²⁵ *MVP Order* at P 439.

²⁶ *ICC II* at 779-780 (quoting *MVP Order* at ¶ 439).

projects, not yet paid for, and since they will benefit electricity users in PJM, those users should contribute to the costs.”²⁷

FERC created the Anti-Pancaking Orders to address local transmission facilities serving local needs. MISO created MVPs to push for new development providing both regional and inter-regional benefits regardless of the location of the load. MVP costs can be allocated based on cost causation to PJM users while not constituting an impermissible resumption of pancaked rates.

D. MISO Need Not File a § 206 Complaint in Order to Impose the MUR on Exports to PJM Because Such an Imposition Would Not Constitute an Impermissible Resumption of Pancaked Rates

MISO may apply the MUR on export and wheel-through transactions sinking in PJM through the present proceeding because the MUR with respect to PJM is not an impermissible resumption of pancaked rates. This Commission has already stated that the MISO Parties may allocate MVP costs to PJM loads in a FPA Section 205 proceeding if such filing “does not involve an impermissible resumption of pancaked rates.”²⁸

As shown above and articulated by the MISO Parties in their Initial Comments,²⁹ applying the MUR to export and wheel-through transactions sinking in PJM does not constitute an impermissible resumption of pancaked rates for two reasons. First, the Rate-Pancaking Orders only apply to existing facilities serving local transmission needs not newly built transmission benefiting both regional and inter-regional loads. Second, the cost causation principle requires those moving energy through or from MISO to PJM to pay their “fair share” of MVP transmission costs because all users of the MISO transmission system benefit from their

²⁷ *ICC II* at 779.

²⁸ *MVP Rehearing Order* at P 292.

²⁹ See *infra* at Section II.C. and MISO Parties Initial Comments at Section III.B.

construction. For these reasons, MISO's section 205 filing does not constitute an impermissible resumption of pancaked rates, and according to FERC precedent is not required to make a section 206 filing.

III. Conclusion

For the reasons stated herein, the Commission should reject the aforementioned arguments, and require all users of the MISO transmission system, including those moving energy through or from MISO to PJM. All users of the MISO transmission system benefit from MVPs and should pay their "fair share" of any attenuated costs.

The OMS submits this pleading because a majority of its members generally support the contents. The Louisiana Public Service Commission, City of New Orleans, Missouri Public Service Commission and Michigan Public Service Commission abstained. The Illinois Commerce Commission and Manitoba Public Utilities Board were not present for the vote.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding. Dated at Lansing, Michigan on this 22nd day of June, 2015.

Tanya Paslawski