

167 FERC ¶ 61,147
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

Tilton Energy LLC

Docket Nos. EL16-108-000

v.

Midcontinent Independent
System Operator, Inc.

American Municipal Power, Inc.

EL17-29-000

v.

Midcontinent Independent
System Operator, Inc.

Northern Illinois Municipal Power Agency

EL17-31-000

v.

PJM Interconnection, L.L.C.

American Municipal Power, Inc.

EL17-37-000

v.

PJM Interconnection, L.L.C.

Dynegy Marketing and Trade, LLC
Illinois Power Marketing Company

EL17-54-000

v.

Midcontinent Independent
System Operator, Inc.

(consolidated)

ORDER ON COMPLAINT, ESTABLISHING HEARING AND SETTLEMENT
JUDGE PROCEDURES, ESTABLISHING REFUND EFFECTIVE DATE, AND
CONSOLIDATING PROCEEDINGS

(Issued May 16, 2019)

1. On August 25, 2016, Tilton Energy LLC (Tilton) filed a complaint against Midcontinent Independent System Operator, Inc. (MISO) pursuant to sections 206 and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure (Complaint).² Tilton alleges that, since Tilton's pseudo-tie arrangement with PJM Interconnection, L.L.C. (PJM)³ became effective on March 1, 2016, MISO has deviated from provisions of its Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) by imposing congestion and administrative charges on Tilton. Tilton also alleges that MISO's assessment of such charges on Tilton is unjust, unreasonable, and unduly discriminatory.

2. As discussed below, we grant the Complaint in part, and deny it in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of August 25, 2016. We also consolidate the instant proceeding with the complaint proceedings in Docket Nos. EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 for purposes of settlement, hearing, and decision.

I. Background

3. In 2014, the Commission approved the request of PJM to amend the PJM Tariff to recognize limits on the amount of capacity from external resources that PJM can reliably import into the PJM region (Capacity Import Limit), and to exempt pseudo-tied

¹ 16 U.S.C. §§ 824e, 825h (2012).

² 18 C.F.R. § 385.206 (2018).

³ Both MISO and PJM are Commission-approved regional transmission organizations (RTO). In this order, MISO and PJM are collectively referred to as the RTOs.

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resources⁴ from the Capacity Import Limit if they meet certain requirements.⁵ Given these changes to the PJM Tariff, the amount of capacity pseudo-tied from MISO to PJM substantially increased between PJM's 2015-2016 planning year and its 2016-2017 planning year.⁶

4. Tilton states that it owns and operates a 180 MW natural gas-fired electric generation facility located in Tilton, Illinois (Tilton Facility).⁷ The Tilton Facility is interconnected to the transmission system owned by Ameren Illinois Company (Ameren Illinois). Although the Tilton Facility is physically located in MISO, the Tilton Facility follows PJM's dispatch instructions and participates in the PJM market through a pseudo-tie to PJM established on March 1, 2016, and has been included in the PJM network model and dispatched by PJM since that date.

5. Tilton states that it is not registered with MISO as a Market Participant and that it interacts with MISO through an energy management agreement with EDF Energy Services, LLC that is administered by EDF Energy Services, LLC's affiliate, EDF Trading North America, LLC (EDF).⁸ EDF is a MISO Market Participant.

6. Tilton states that it has purchased long-term firm transmission service from MISO to PJM, and pays fees for this transmission service pursuant to the MISO Tariff.⁹ On August 21, 2012, on behalf of Tilton, EDF entered into four long-term point-to-point Transmission Service Agreements on the Open Access Same Time Information System

⁴ A pseudo-tied generation resource is one physically located in one Balancing Authority Area, but treated electrically as being in another Balancing Authority Area. *See, e.g., Integration of Variable Energy Resources*, Notice of Inquiry, 130 FERC ¶ 61,053, at P 32 n.23 (2010) ("Pseudo-ties are defined as telemetered readings or values that are used as 'virtual' tie line flows between balancing authorities where no physical tie line exists.").

⁵ *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,060, at PP 25, 49-54 (2014).

⁶ Complaint, Ex. F at 2. MISO and PJM have stated in a Joint and Common Market (JCM) presentation that 156 MW were pseudo-tied during the 2015-2016 planning year and that the amount increased to 2,061 MW for the 2016-2017 planning year. MISO Answer, Att. A, Ex. 1 at 4.

⁷ Complaint at 6.

⁸ *Id.* at 7.

⁹ *Id.* (citing *id.*, Ex. A ¶ 5).

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operated by MISO.¹⁰ These agreements cover 180 MW of transmission capacity from the Ameren Illinois region of MISO to PJM, and are effective during the term of June 1, 2014 through June 1, 2020.

II. Complaint

7. According to Tilton, MISO assesses congestion costs and losses on Tilton through the Transmission Usage Charge (TUC).¹¹ The TUC is:

A charge attributable to the increased cost of Energy delivered at a given Commercial Node when the Transmission System is operating under constrained conditions or due to losses on the system. The TUC is the per unit charge to support a Through Schedule or Financial Schedule or Generator Self-Supply and is equal to the difference in the [Locational Marginal Price (LMP)] at the sink and the LMP at source (in dollars per/MWh), which includes the Cost of Congestion and the Cost of Losses.¹²

8. According to Tilton, MISO uses Financial Schedules to assess congestion costs and administrative fees against generators pseudo-tied out of MISO such as the Tilton Facility.¹³ In the MISO Tariff, Financial Schedule is defined as:

A financial arrangement between two Market Participants designating a Source Point, Sink Point and Delivery Point establishing the obligations of the buyer and seller for the payment of Cost of Congestion and Cost of Losses. The Transmission

¹⁰ An August 21, 2012 letter agreement between Tilton and EDF states that, “[EDF] and Tilton each acknowledge and agree that . . . [EDF] has entered into the Transmission Service Agreements as agent for, and for the benefit of, Tilton . . .” *Id.* n.22 (quoting *id.*, Ex. E). Given the principal-agent relationship between Tilton and EDF, for purposes of this order, we refer to Tilton as a MISO Transmission Customer. Further, because, as discussed below, under Attachment L (Credit Policy) of the MISO Tariff each MISO Transmission Customer must be a Market Participant or be represented by a duly authorized Market Participant, we also refer to Tilton as a MISO Market Participant.

¹¹ Tilton Complaint at 18. Unless otherwise specified, all capitalized terms herein shall have the same definition as in the MISO Tariff.

¹² MISO Tariff, Module A, Section 1.T.

¹³ Complaint at 21, 24.

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Provider is not the Energy Market Counterparty to the sale of Energy under a Financial Schedule transaction and collects and disburses the [TUC] as agent for the parties to the Financial Schedule.¹⁴

9. Tilton argues that in using Financial Schedules to assess congestion costs against generators pseudo-tied out of MISO, MISO has acted contrary to the MISO Tariff.¹⁵ Tilton asserts that multiple provisions of the MISO Tariff state that Financial Schedules are contracts between two separate Market Participants, and that MISO is not a counterparty to the transaction.¹⁶

10. Tilton states that under the Financial Schedules established by MISO for Tilton, the Asset Owner is both the buyer and the seller, and is responsible for the TUC, which includes congestion costs, associated with the Financial Schedule.¹⁷ Tilton asserts that MISO did not seek approval for any waiver from or modification to the MISO Tariff before implementing this procedure; rather, MISO simply revised its Business Practices Manuals (BPMs) to reflect the decision to use Financial Schedules to record transmission transactions for generators pseudo-tied out of MISO, despite the non-existence of a bilateral transaction that is a prerequisite for the use of a Financial Schedule.

11. In addition, Tilton argues that MISO's assessment of congestion costs on generation pseudo-tied from MISO to PJM is unjust, unreasonable, and unduly discriminatory because it results in such pseudo-tied generation being charged twice for congestion costs and administrative fees along the same path and charged for real-time congestion costs that would not be assessed if the generation were physically

¹⁴ MISO Tariff, Module A, Section 1.F. Tilton does not assert that MISO is improperly assessing losses on Tilton.

¹⁵ Complaint at 5, 26-27.

¹⁶ *Id.* at 17 & n.62 (quoting MISO Tariff, Module A, Section 6A (“The Transmission Provider collects and disburses the Transmission Usage Charge as agent *for the parties* to the Financial Schedule and is not the Energy Market Counterparty to the transaction.” (emphasis in Complaint)); MISO Tariff, Module A, Section 7.8 (“If the non-payment is a failure *of a party* to a Financial Schedule to pay the Financial Schedule related charge owed by it, the Transmission Provider shall reduce the payment *to the other party* to the Financial Schedule” (emphasis in Complaint)); MISO Tariff, Module C, Section 39.1.3 (“The Financial Schedule shall include . . . [i]dentification of the *Market Participants* included in the Financial Schedule.” (emphasis in Complaint))).

¹⁷ *Id.* at 19 (citing, *inter alia*, BPM-005, Market Settlements, Section 2.7.3).

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located within PJM.¹⁸ Tilton explains that when market-to-market constraints bind simultaneously in both MISO and PJM, generators such as Tilton that are pseudo-tied can be charged both by PJM, where the congestion costs are incorporated into the LMP, and by MISO, where the costs are assessed through a Financial Schedule settlement. Tilton argues that because it does not participate in MISO's markets, MISO should not be assessing congestion costs to Tilton, as such costs should be reflected in the LMP determined by PJM. Further, Tilton argues that MISO's decision to use Financial Schedules to conduct transmission transactions involving generation pseudo-tied from MISO to PJM results in duplicative administrative service fees by both MISO and PJM for the same megawatt-hours of energy produced.

12. Tilton argues that MISO's assessment of real-time congestion costs against generation pseudo-tied from MISO to PJM is also unjust and unreasonable because these charges are not able to be hedged and are inconsistent with market fundamentals.¹⁹ Tilton argues that Financial Transmission Rights (FTRs) are not an effective hedging tool because, when dispatched, Tilton does not receive the floating price of the MISO Tilton nodal LMP that is utilized in the MISO congestion calculation.²⁰ Tilton asserts that purchasing an FTR would only create additional risk for Tilton in the form of day-ahead versus real-time price risk and basis risk between the MISO Tilton LMP and the PJM Tilton LMP. Tilton asserts that because such congestion costs are assessed outside the market in which the pseudo-tied generation participates, they are not included in any price signal and cannot be meaningfully factored into offers or recovered through any of PJM's make-whole provisions.

13. Tilton requests that the Commission require MISO to cease assessing congestion and administrative charges against Tilton and to cease creating or using Financial Schedules in a manner inconsistent with the MISO Tariff. Tilton also requests that the Commission establish a refund effective date as of March 2, 2016, the first date MISO began charging Tilton congestion and administrative charges after it established a pseudo-tie to PJM. In the alternative, Tilton requests a refund effective date as of the date of its Complaint. Tilton alleges that MISO has used Financial Schedules to assess Tilton \$147,448.35 in congestion costs and \$21,983.52 in administrative charges from March 2, 2016 through July 31, 2016.²¹

¹⁸ *Id.* at 31.

¹⁹ *Id.* at 32.

²⁰ *Id.* at 34 (citing *id.*, Ex. A ¶ 11).

²¹ *Id.* at 20 (citing *id.*, Ex. K; Ex. A ¶ 6).

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14. Tilton requests summary disposition of the Complaint.²² Tilton asserts that the Commission is able to provide the relief requested in this proceeding based on the Complaint and supporting documentation and that no evidentiary hearing is required. Tilton notes that the Commission has an established practice to seek to resolve proceedings without hearings when there are no genuine issues of material fact involved.

III. Notice of Filing and Responsive Pleadings

15. Notice of Tilton's Complaint was published in the *Federal Register*, 81 Fed. Reg. 60,692 (2016), with interventions and protests due on or before September 26, 2016. The Council of the City of New Orleans, Louisiana, and the Organization of MISO States filed notices of intervention. Ameren Services Company;²³ American Electric Power Service Corporation; American Municipal Power Inc. (AMP); DC Energy, LLC; Entergy Services, Inc. (Entergy);²⁴ Illinois Municipal Electric Agency; Illinois Power Marketing Company and Dynegy Marketing and Trade, LLC (collectively, the Dynegy Companies); MISO Transmission Owners;²⁵

²² *Id.* at 39.

²³ Ameren Services Company is intervening on behalf of its affiliated public utility operating company, Ameren Illinois Company.

²⁴ Entergy is intervening on behalf of: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

²⁵ The MISO Transmission Owners for this proceeding consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITC Transmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; 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.; South Mississippi Electric Power Association; Southern Illinois Power
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Northern Illinois Municipal Power Agency (NIMPA); NRG Power Marketing LLC and GenOn Energy Management, LLC; Southern Company Services, Inc.;²⁶ VECO Power Trading, LLC; and Wabash Valley Power Association, Inc., filed timely motions to intervene. Direct Energy Business Marketing, LLC (Direct Energy); Electric Power Supply Association; Enel Green Power North America, Inc.; Exelon Corporation (Exelon); and Rockland Power Partners II, LP; PJM; and Potomac Economics, Ltd., the MISO Independent Market Monitor (MISO Market Monitor), filed motions to intervene out-of-time.

16. On September 26, 2016, MISO filed an answer. Also on September 26, 2016, AMP, the Dynegy Companies, and NIMPA each filed comments in support of the Complaint, and Entergy filed a protest. On October 11, 2016, Tilton filed a motion for leave to answer and an answer to the MISO Answer. On October 14, 2016, the MISO Market Monitor filed comments. On October 26, 2016, MISO filed a motion for leave to answer and a limited reply to Tilton's answer and to the AMP Comments, the Dynegy Companies Comments, and NIMPA Comments.

17. On January 25, 2017, the RTOs filed a joint motion to hold in abeyance the instant proceeding as well as the complaint proceedings in Docket Nos. EL17-29-000, EL17-31-000, and EL17-37-000 in order to develop a methodology to resolve the congestion overlap issue related to pseudo-ties. Answers opposing the abeyance motion were filed by AMP on January 27, 2017, by NIMPA on January 31, 2017,²⁷ and by Tilton on February 1, 2017. On February 8, 2017, Exelon and Direct jointly filed a motion to consolidate Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 and comments supporting the abeyance motion. On February 9, 2017, the MISO Transmission Owners filed an answer to the abeyance motion stating that they did not oppose it. On February 23, 2017, AMP filed (1) an answer to Exelon and Direct Energy's joint motion to consolidate and comments and (2) a motion for leave to answer and answer to the MISO Transmission Owners' answer and the February 9, 2017

Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

²⁶ Southern Company Services, Inc. is intervening by and on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company.

²⁷ NIMPA also requested that the Commission consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

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answer of Monitoring Analytics, LLC, the Independent Market Monitor for PJM (PJM Market Monitor).²⁸

18. On March 27, 2017, the RTOs filed a joint informational status update in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 detailing the progress that had been made during discussions between both RTOs. AMP and NIMPA filed responses to this status update.²⁹

19. On May 26, 2017, the RTOs filed a second joint status update in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000. AMP filed comments to this status update. On July 25, 2017, the RTOs filed a third joint status update. AMP filed a response to the RTOs' abeyance motion and third status update. On September 25, 2017, the RTOs filed a fourth joint status update. Tilton filed an answer to this status update. On November 22, 2017, the RTOs filed a fifth joint status update. AMP filed comments to this status update. On January 23, 2018, the RTOs filed a sixth joint status update. AMP filed comments to this status update. On April 6, 2018, the RTOs filed a seventh joint status update. NIMPA filed comments to this status update.³⁰

20. On June 1, 2018, the Tilton, AMP, NIMPA, and the Dynegy Companies (collectively, Complainants) filed a joint request for Commission action to the status update, requesting, *inter alia*, that the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 be consolidated. On June 13, 2018, MISO filed a motion for leave to answer and answer to the Complainants' joint request. On June 28, 2018, Complainants filed a joint motion for leave to answer and answer to MISO's answer.

A. MISO Answer

21. MISO argues that the Tilton Complaint should be denied in its entirety because: (1) the charges assessed on the Tilton Facility are consistent with the MISO Tariff; and

²⁸ The PJM Market Monitor's February 9, 2017 pleading was filed in Docket Nos. EL17-31-000 and EL17-37-000 but not in the instant docket.

²⁹ In NIMPA's response, NIMPA again requested that the Commission consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

³⁰ In NIMPA's comments, NIMPA reiterated its request to consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

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(2) Tilton has failed to carry its burden under section 206 of the FPA to show that any existing Tariff provision or practice is unjust and unreasonable.³¹ In addition, MISO argues that Tilton has failed to initiate dispute resolution procedures prior to filing the Complaint, which, MISO claims, is required by Commission precedent.³²

22. MISO disagrees with Tilton's assertion that MISO's use of Financial Schedules to account for the congestion costs associated with Tilton's pseudo-tie transactions is improper due to the lack of two different Market Participants acting as the seller and the buyer.³³ MISO argues that Tilton's interpretation ignores that congestion and administrative charges are assessed not because MISO settles them by using Financial Schedules, but because the MISO Tariff independently requires Transmission Customers and Market Participants to compensate MISO for all system usage and costs associated with their transmission service transactions. MISO explains that when the Tilton Facility sends its output to PJM, it causes congestion and losses on the MISO system and imposes certain other costs on MISO's Market Participants.³⁴ MISO asserts that the MISO Tariff requires Tilton to pay for these costs irrespective of whether a Financial Schedule or some other cost assessment mechanism is used to bill Tilton for its pseudo-tie transactions.

23. MISO asserts that although Tilton has purchased long-term firm transmission service from MISO to PJM, paying for transmission service does not exempt Tilton from paying for congestion and losses.³⁵ MISO notes that Schedule 7 of the MISO Tariff (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service) is clear that the Reserved Capacity charges under that Schedule, which compensate MISO's Transmission Owners, are "in addition to other applicable charges specified in the [MISO] Tariff." MISO also notes that Section 15.7 of the MISO Tariff further provides that "System Losses are associated with all Transmission Service" and requires MISO to "assess all Market Participants the Marginal Losses Component of Ex Post LMP," as set forth in certain specified provisions applicable to Day-Ahead and Real-Time markets. MISO notes that its Credit Policy recognizes that "all Transmission Service transactions

³¹ MISO Answer at 1-2.

³² *Id.* at 8, 27 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 115 FERC ¶ 61,177, at P 12 (2006); *Strategic Energy L.L.C. v. California Indep. Sys. Operator Corp.*, 95 FERC ¶ 61,312, at 62,069-70, *order on reh'g*, 96 FERC ¶ 61,146 (2001)).

³³ *Id.* at 3, 13-14.

³⁴ *Id.* at 3, 9-10.

³⁵ *Id.* at 11.

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are subject to congestion costs and marginal losses.”³⁶ MISO states that requirements to pay congestion and losses are further emphasized in provisions applicable to Module B Transmission Service, such as Section 22.2 (Additional Charge to Prevent Abuse) and Section 23.2 (Limitations on Assignment or Transfer of Service).³⁷

24. MISO explains that under the MISO Tariff, the TUC supports Interchange Schedules (i.e., Export, Import or Through Schedules), Financial Schedules, and Generator Self-supply Schedules.³⁸ MISO asserts that while pseudo-tie transactions are functionally identical to exports or through schedules, they better lend themselves to the administrative mechanisms utilized for Financial Schedules. MISO states that pseudo-tie administration presents certain unique modeling, meter data reporting and settlement burdens and challenges. MISO explains that by utilizing modified capabilities established to administer Financial Schedules, MISO resolved these challenges in order to ensure that Tilton’s and other pseudo-tied Market Participants’ commercial choices are properly supported. MISO asserts that it was appropriate to clarify, in the BPMs, the use of Financial Schedules procedures and capabilities for the purposes of settling MISO Tariff-required congestion and losses charges associated with pseudo-tied units. MISO notes that Section 2.7.3 of MISO’s Market Settlements BPM clarifies that Financial Schedules procedures and capabilities can be used for the purposes of settling MISO Tariff-required congestion and loss charges associated with pseudo-tied units,³⁹ and that Section 2.7.3 of its Market Settlements BPM, as well as the other Market Settlements BPM provisions applicable to pseudo-ties, have been applied since MISO launched its energy markets in 2005.

25. MISO disagrees with Tilton that this BPM practice unlawfully changes the MISO Tariff.⁴⁰ MISO asserts that the MISO Tariff requires Tilton to pay for the Cost of Congestion and the Cost of Losses associated with its pseudo-tie transaction and that

³⁶ *Id.* (quoting MISO Tariff, Att. L).

³⁷ *Id.* n.43 (quoting MISO Tariff, Module B, Section 22.2 (“In addition, the Market Participant shall pay for marginal Losses and any congestion relief costs based on the actual transmission path for which service is scheduled according to provisions in Module C.”); MISO Tariff, Module B, Section 23.2 (“In addition, the Market Participant shall be financially responsible for any Energy, Marginal Congestion Charge, and Marginal Losses associated with related Market Participant’s transactions . . .”)).

³⁸ *Id.* at 13.

³⁹ *Id.* at 18-19 (citing BPM-005, Market Settlements, Section 2.7.3).

⁴⁰ *Id.* at 16 (citing Complaint at 19-20).

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there is no modification to any of the formulas established by the MISO Tariff to calculate the Cost of Congestion and the Cost of Losses. MISO asserts that, instead, using the existing Financial Schedule settlement infrastructure implements these requirements in a cost-efficient way for MISO and its Market Participants, including pseudo-tie Transmission Customers.

26. In addition, MISO states that Tilton's pseudo-tie arrangement imposes certain recognized administrative costs on MISO, which are captured under various schedules in the MISO Tariff.⁴¹ MISO states that its invoices to Tilton include the following charges to recover MISO's administrative costs: (1) Schedule 10 charges (ISO Cost Recovery Adder); (2) Schedule 17 (Energy Market Support Administrative Service Cost Adder); and (3) Schedule 24 (Local Balancing Authority Adder). MISO explains that these charges are applied to Tilton due to its procurement of transmission service in MISO (Schedule 10), participation in transactions using the MISO Transmission System (Schedule 17), and imposing costs on its Local Balancing Authority by engaging in such Transactions (Schedule 24).⁴² MISO asserts that the MISO Tariff grants no exception to pseudo-ties from any of these charges, which have been a long-standing feature of MISO's Commission-approved rate design. Further, with respect to Schedule 10 charges, MISO asserts that the fact that PJM may assess similar charges under the PJM Tariff is immaterial and simply reflects the undisputed reality that Tilton is engaged in transactions that require transmission service from both RTOs.

27. MISO argues that exempting Tilton from the assessed charges would be inconsistent with cost causation principles.⁴³ MISO asserts that granting the Tilton Complaint would result in impermissible cost shifts, requiring MISO's Market Participants to subsidize the benefits Tilton obtains from its pseudo-tie arrangement with PJM, and Tilton essentially would become a free rider. MISO explains that exempting Tilton from MISO congestion charges would shift the congestion costs caused by Tilton's transactions to other Transmission Customers and Market Participants in the form of FTR Shortfalls or Real-time Congestion Uplifts. MISO also explains, *inter alia*, that exempting Tilton from the administrative charges under Schedules 10, 17 and 24

⁴¹ *Id.* at 11, 17.

⁴² MISO explains that although the Tilton Facility is pseudo-tied to PJM's Balancing Authority Area for purposes of PJM's markets, it is still interconnected to and physically injecting energy into the Transmission System in the Ameren Illinois Local Balancing Authority as far as reliability is concerned. *Id.* at 19.

⁴³ *Id.*

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similarly would result in other Transmission Customers and Market Participants subsidizing the services and benefits that Tilton receives under these Schedules.

28. MISO argues that Tilton's claimed exemption is particularly untenable in light of the fact that MISO's Schedule 7 through-and-out rate to PJM is zero.⁴⁴ MISO explains that its internal customers are already bearing the full cost responsibility for all existing transmission facilities that Tilton is using for its PJM deliveries, and thus, waiving congestion, losses or other charges in such circumstances would effectively result in free transmission service for Tilton.

29. MISO also argues that exempting Tilton from the assessed charges would be unduly discriminatory and preferential.⁴⁵ MISO states that, like exporters, Tilton is required to procure transmission service from MISO to enable its pseudo-tie deliveries to PJM and pay various charges associated with its transmission service and system usage. MISO asserts that because these exporting customers are required to pay for congestion between the injection inside MISO and their External Interface, as well as losses and other associated charges, the same requirement should apply to similarly situated pseudo-tied resources, such as the Tilton Facility. MISO explains that the physical location of the Tilton Facility is still the same with or without pseudo-tie arrangements and that the congestion on the MISO Transmission System does not change depending on whether MISO or PJM sends dispatch signals to the unit.⁴⁶ MISO argues that under the Commission's cost causation rules, as well as the FPA undue discrimination requirements, Tilton must be treated just like any other Transmission Customer exporting to PJM.

30. Further, MISO argues that the Complaint does not meet the burden of proof under section 206 and fails to demonstrate that any MISO Tariff provision or MISO practice is unjust and unreasonable.⁴⁷ MISO states that it is not disputing the existence of some double counting of congestion associated with pseudo-ties under market-to-market coordination with PJM in some circumstances. However, MISO explains that this overlap does not apply to all congestion, but instead is limited to a narrow set of circumstances: only when a Reciprocally Coordinated Flowgate under the MISO-PJM Joint Operating Agreement (JOA) binds simultaneously in both the MISO and PJM markets. MISO argues that the Complaint fails to show how any of the congestion charges MISO has assessed Tilton are duplicative even under its own theory—i.e., how

⁴⁴ *Id.* at 20; *see also id.* at 11 n.39 (citing MISO Tariff, Sched. 7, Section (3)).

⁴⁵ *Id.* at 19.

⁴⁶ *Id.* at 4.

⁴⁷ *Id.* at 4, 22.

they have resulted in congestion payments by Tilton to both MISO and PJM on Reciprocally Coordinated Flowgates during time intervals those flowgates bound in both markets.

31. MISO also states that although Tilton acknowledges that an overlap of congestion charges, even when it exists, affects only a limited subset of facilities, Tilton nonetheless requests to be exempted from all congestion, as well as applicable administrative charges, which have nothing to do with the market-to-market protocol and the alleged double counting.⁴⁸ MISO asserts that, accordingly, even if Tilton has been subject to double counting of congestion, Tilton's claimed refund is still widely overstated.⁴⁹

32. MISO disagrees with Tilton that MISO's treatment of its pseudo-tie is not just and reasonable because it has limited ability to hedge the risk presented by MISO's charges and has no recourse to uplift payments.⁵⁰ MISO explains that under the MISO Tariff, Tilton has access to standard hedging instruments within MISO, such as FTRs, which conform to all applicable Commission requirements. MISO states that to the extent any of these instruments are less financially appealing or are too cumbersome to use in Tilton's case, that is simply a reflection of the fact that Tilton has chosen not to participate in MISO's markets. MISO also notes that MISO does provide LMPs for pseudo-tie commercial Pricing Nodes, including the four nodes established for Tilton, with MISO's Day-Ahead Market results and in Real-Time via the MISO website and market portal. Thus, MISO disagrees with Tilton's assertion that MISO's charges are not included in any price signal.

33. MISO asserts that to the extent action is required to address the double counting issue, the Commission should base such action on a comprehensive record, including an analysis of costs, cost causers, benefits, and beneficiaries of all aspects of the issue.⁵¹ MISO recommends that the Commission allow the RTOs to address the issue through on-going cooperation, the JCM and RTO stakeholder processes.⁵² MISO also notes that the

⁴⁸ *Id.* at 25.

⁴⁹ *Id.* at 28.

⁵⁰ *Id.* at 26.

⁵¹ *Id.*

⁵² MISO notes that the double counting issue was presented at several JCM meetings: on February 11, 2016; May 24, 2016; and August 23, 2016. *Id.* at 7. MISO also notes that at the August 23, 2016 JCM meeting, a detailed presentation was discussed with stakeholders and certain options for addressing the issue were outlined.

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Commission could establish a technical conference, notice of inquiry, or rulemaking to establish a sufficient record on which to act.

34. MISO argues that if the Commission decides that any MISO practice or MISO Tariff provision is no longer just and reasonable, the relief should be prospective only, as of the date of the Commission's order.⁵³ MISO notes that in RTO markets, the Commission has declined refunds where they would require re-running of the market or would have other adverse effects on the market.⁵⁴ Further, MISO argues that any such prospective relief should not be one-sided: MISO asserts that to the extent the Commission decides to address the double counting issue in this proceeding, both RTOs should be required to implement any potential solution and bear the appropriate costs of that solution.⁵⁵

B. Comments

35. AMP, NIMPA, the Dynegy Companies, Entergy, and the MISO Market Monitor filed substantive comments in this proceeding. AMP, NIMPA, and the Dynegy Companies support Tilton's Complaint. AMP and NIMPA each own an interest of the Prairie State Energy Campus (Prairie State), a coal-fired generating station located in Washington County, Illinois. Both AMP and NIMPA pseudo-tie their respective interest of Prairie State's generation from MISO to PJM, and they both claim that they are subject to duplicative congestion charges.⁵⁶ AMP states that the market distorting effects of the duplicative charges are substantial.⁵⁷ AMP asserts that efforts by the RTOs to address the overcharge issue have stalled. AMP asserts that irreversible damage to market operations

⁵³ *Id.* at 29.

⁵⁴ *Id.* (citing *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at P 157 (2009), *California ISO*, 120 FERC ¶ 61,271, at PP 24-25 (2007)).

⁵⁵ *Id.* at 29-30.

⁵⁶ AMP Comments at 3; NIMPA Comments at 4-5.

⁵⁷ AMP Comments at 5. AMP notes that for June 2016, the first month that its Prairie State Energy Campus pseudo tie was in effect, MISO has indicated that roughly 30 percent of certain congestion charges imposed on pseudo-tied generators duplicate congestion charges that PJM also imposes. *Id.* at 4 (citation omitted); *see also* MISO Answer, Att. A, Ex. 1 at 15.

(continued ...)

and competition in both RTO markets will continue unabated for the foreseeable future unless the Commission acts promptly.

36. NIMPA asserts that because MISO has assessed duplicative congestion and administrative charges on Tilton and other pseudo-tied generators, the charges from MISO appear to be unjust and unreasonable, in violation of cost causation principles.⁵⁸ NIMPA requests that the Commission establish a full evidentiary hearing and settlement judge proceedings to determine a just and reasonable allocation of pseudo-tie related congestion and related administrative charges from both MISO and, if appropriate, PJM, and order appropriate refunds for all intervening parties that have been unjustly and unreasonably assessed duplicative charges.

37. The Dynegy Companies agree with Tilton that MISO's use of Financial Schedules involving only one Market Participant as buyer and seller to document transactions involving pseudo-tied generation is not permitted under the plain language of the MISO Tariff.⁵⁹ The Dynegy Companies also agree with Tilton that the congestion charges MISO has assessed to generation pseudo-tied from MISO to PJM are unjust and unreasonable because they are duplicative and are not currently able to be reflected in the PJM price signal to the pseudo-tied unit or factored into pseudo-tied unit offers. The Dynegy Companies argue that the Commission should direct refunds of all improperly assessed congestion and scheduling fees assessed to Tilton and to any pseudo-tied resources similarly situated to Tilton, including resources owned and marketed by the Dynegy Companies. The Dynegy Companies assert that the Commission should direct the RTOs to develop an ad-hoc coalition to promptly work to implement a method whereby any congestion from the pseudo-tied resource can be modeled by PJM and included in PJM's market results.

38. Entergy contends that Tilton's argument regarding double payment of congestion charges pursuant to the MISO-PJM market-to-market process is speculative and unsupported.⁶⁰ Entergy asserts that Tilton has inappropriately conflated the congestion charges it receives from MISO that are not related to market-to-market constraints and those that it alleges to have incurred due to the market-to-market process. Entergy notes that only a limited number of flowgates are included in the market-to-market process and Tilton has failed to identify even one of the market-to-market flowgates that is at issue in its Complaint. Entergy states that if the Commission finds that there is some potential for double payment of market-to-market congestion costs above a *de minimus* amount that

⁵⁸ NIMPA Comments at 1, 4-5.

⁵⁹ The Dynegy Companies Comments at 3.

⁶⁰ Entergy Comments at 5.

(continued ...)

may create an unjust and unreasonable rate, the Commission should direct parties to attempt to resolve the issue through existing processes.

39. Entergy asserts that cost causation principles require that Tilton pay for congestion from its resource to the MISO border.⁶¹ Entergy explains that when MISO manages around the output of a pseudo-tied resource, MISO orders resources under MISO's control to ramp up or down, which in turn causes increased costs. Entergy avers that if MISO did not assess congestion charges on Tilton, these costs would continue to be incurred – but would shift to other Market Participants on MISO's system. Entergy suggests that given the important reliability and efficiency concerns connected with these issues, if the Commission does not deny the Complaint outright, the Commission should consider whether to hold a technical conference on pending pseudo-tied resources located in MISO.

40. The MISO Market Monitor generally supports MISO's answer, agreeing that the assessment of congestion and certain administrative charges are consistent with the MISO Tariff and that pseudo-tied generators are using the MISO Transmission System to meet their capacity obligations in PJM.⁶² The MISO Market Monitor disagrees with Tilton's argument that the congestion charges assessed by MISO are duplicative with the charges collected by PJM through PJM's energy settlement at the generators' LMPs. The MISO Market Monitor asserts that PJM's energy settlement does not include the myriad of non-market-to-market constraints that the pseudo-tied resources affect and that the congestion costs collected through the PJM LMPs do not fully reflect the congestion that is caused by the pseudo-tied units. The MISO Market Monitor states that pseudo-tie arrangements unambiguously raise the costs of managing jointly-coordinated constraints by reducing the efficiency of the MISO dispatch. The MISO Market Monitor asserts that although this cost is indirect, it is significant and should be considered in the allocation of costs to the pseudo-tied suppliers. Further, the MISO Market Monitor states that the administrative charges MISO has imposed on Tilton should not be refunded. The MISO Market Monitor notes that pseudo-tied resources place administrative costs on MISO and PJM that are not being allocated to PJM's external capacity resources.

41. Further, the MISO Market Monitor argues that the issues raised in the Complaint cannot be disentangled from the broader concerns with pseudo-tied resources.⁶³ The MISO Market Monitor notes that it has been very concerned about the adverse economic and reliability effects of allowing a large number of generating facilities in one RTO to be pseudo-tied to a neighboring RTO. The MISO Market Monitor asserts that the rapid

⁶¹ *Id.* at 8.

⁶² MISO Market Monitor Comments at 5.

⁶³ *Id.* at 3.

trend toward pseudo-tied resources is being driven almost entirely by the requirement in the PJM Tariff that external capacity resources be pseudo-tied to PJM. The MISO Market Monitor asserts that the pseudo-tying requirement imposed by PJM provides no real reliability benefits to PJM and, in the end, raises costs to PJM, MISO, and the owners of the pseudo-tied resources relative to other more sensible arrangements for delivering capacity to PJM. The MISO Market Monitor recommends that the Commission reject the relief requested by Tilton and, instead, issue an order under FPA section 206 to address the underlying problem by revisiting the pseudo-tie requirement in the PJM Tariff.

C. Tilton Answer

42. Tilton asserts that the MISO Answer failed to establish the existence of an affirmative defense to the allegations in the Complaint.⁶⁴ Tilton asserts that among other things, MISO has not: (1) provided any MISO Tariff provision that justifies the charges at issue on pseudo-tied generators such as Tilton; (2) rebutted the claim that a Financial Schedule must be a bilateral transaction; (3) provided any precedent that would indicate that the Commission countenances duplicative charges for the service on the same transmission path.

43. Tilton disagrees with MISO that MISO is entitled to charge Tilton for congestion and losses due to the TUC.⁶⁵ Tilton argues that according to the MISO Tariff's definition of the TUC, without either a Through Schedule, Generator Self-Supply, or a Financial Schedule, the TUC is inapplicable. Tilton disputes MISO's contention that a pseudo-tie transaction is like an Export or Through Schedule, noting that PJM is responsible for scheduling, settling, and dispatching Tilton. Tilton further argues that being *like* a service that triggers the charge is not the same as being a service that triggers the charge.⁶⁶

⁶⁴ Tilton Answer at 21.

⁶⁵ *Id.* at 4.

⁶⁶ *Id.* at 7-8 and *id.* Att. A. Tilton notes that MISO has cited Schedule 7; Module B, Section 15.7; Module C, Section 40.4.2; Module B, Section 22.2; and Module B, Section 23.2 of the MISO Tariff. Tilton asserts that Schedule 7 contains a general reference that Transmission Customers shall pay charges specified in the MISO Tariff and does not itself contain the specifications. Tilton asserts that Module B, Section 15.7 addresses losses that are not at issue in the Tilton Complaint and refers to four other MISO Tariff sections, each of which is not applicable to the Complaint: Module C, Section 39.2.9, applicable to the MISO Day Ahead Energy and Operating Reserve Market in which Tilton does not participate; Module C, Section 40.2.11, relevant to the MISO Real Time Energy and Operating Reserve Market in which Tilton does not participate; Module C, Section 39.3.3.c.ii, pertaining to Through Schedules, not a schedule used by
(continued ...)

44. In addition, Tilton disagrees with MISO's argument that its BPMs permit MISO to create Financial Schedules in the absence of a bilateral transaction.⁶⁷ Tilton asserts that MISO's argument ignores settled Commission precedent that "business practice manuals should comply with the terms of the [MISO] Tariff, and not the other way around."⁶⁸ Tilton argues that MISO's BPMs exist to provide the details of MISO Tariff provisions and that MISO may not use its BPMs to redefine the term "Financial Schedule" to apply to transactions involving only one Market Participant.

45. Tilton also contends that the Commission should grant its Complaint because MISO has admitted the possibility of double charging for congestion and because MISO has in its possession evidence that generation pseudo-tied out of MISO is being assessed duplicative congestion charges.⁶⁹ Tilton claims that MISO knows when congestion binds in both markets, and knows that such a situation occurred during the time period at issue at relevant flow-gates.

46. Further, Tilton asserts that contrary to MISO's allegations, the elimination of MISO's duplicative congestion charges against Tilton would be neither discriminatory nor inconsistent with cost causation principles.⁷⁰ Tilton argues that the correct charges are being assessed through the market-to-market process by PJM, and the incorrect charges are being assessed through an improper Financial Schedule by MISO. Tilton therefore concludes that granting the Complaint will not shift costs to other MISO Market Participants. Further, Tilton contends that because MISO has indicated that a potential solution to the double counting problem is for the "[n]ative RTO [to] eliminate[]

Tilton; and Module C, Schedule 40.4.1, pertaining to Interchange Schedules, also not at issue for Tilton. Tilton asserts that Module C, Section 40.4.2, which sets forth the formula MISO must use to calculate the TUCs applicable to Financial Schedules, is not applicable to Tilton, as the unilateral Financial Schedules do not conform to the provisions of the MISO Tariff. Tilton asserts that Module B, Section 22.2 is completely irrelevant to a pseudo-tie and relates to customers with firm point-to-point transmission that are scheduling on a secondary non-firm basis to secondary receipt and delivery points. Tilton asserts that Module B, Section 23.2 also is irrelevant, as this provision relates to limitations on the assignment or transfer of service and to requesting changes to receipt or delivery points.

⁶⁷ Tilton Answer at 8.

⁶⁸ *Id.* at 8-9 (citations omitted).

⁶⁹ *Id.* at 10, 16.

⁷⁰ *Id.* at 11.

(continued ...)

congestion charge at pseudo-tie node due to associated [market-to-market] constraints,” such a solution presumably is not inconsistent with Commission policy.⁷¹

47. Tilton also argues, *inter alia*, that contrary to MISO’s claims, its Complaint is not deficient.⁷² Tilton notes that MISO does not make public the data necessary for generators pseudo-tied out of MISO to determine when the market-to-market flowgates bind simultaneously but contends that recent publications by the RTOs demonstrate that they bind on a regular basis.

48. Tilton contends that providing refunds for these inappropriately-assessed charges would not disrupt the MISO market.⁷³ Tilton argues that MISO would not be required to re-run the market in order to provide the requested refunds. Tilton also disagrees with MISO’s argument that Tilton’s Complaint should be dismissed because Tilton failed to initiate the dispute resolution process.⁷⁴ Tilton notes that neither the MISO Tariff nor Commission precedent imposes such a requirement.

49. Tilton states that it does not object to MISO’s suggestion that a technical conference or other fact-finding inquiry be initiated by the Commission to explore the issues raised in Tilton’s Complaint as long as the Commission establishes the earliest-possible refund effective date.⁷⁵ However, Tilton states that it disagrees with MISO’s assertion that it is appropriate to relegate the issues raised in Tilton’s Complaint to the ongoing MISO and PJM stakeholder processes, given the extended timeframe in which stakeholder processes may reach resolution, the possibility that no resolution will be reached, or the possibility that MISO chooses to do nothing.⁷⁶ Tilton states that prompt action on the Tilton Complaint, including the establishment of a refund effective date as requested by Tilton, is necessary to ensure that Tilton is not subjected to rates that are unjust, unreasonable, and unduly discriminatory in contravention of the FPA.

⁷¹ *Id.* at 13 (quoting MISO Answer, Att. A, Ex. 1 at 16).

⁷² *Id.* at 18.

⁷³ *Id.* at 17.

⁷⁴ *Id.* at 19 (citation omitted).

⁷⁵ *Id.* at 2-3.

⁷⁶ *Id.* at 3 & n.13 (quoting August 23, 2016 Joint and Common Market Pseudo-Tie Presentation at 16 (“Congestion Overlap: Path Forward; continue to explore and evaluate options . . . Option 3: No changes.”), attached as MISO Answer, Att. A, Ex. 1).

(continued ...)

D. MISO Reply

50. In the MISO Reply, MISO argues that Tilton is incorrect in claiming that MISO's charges are unauthorized.⁷⁷ MISO asserts that there is no special service under the MISO Tariff that would exempt Transmission Customers engaging in pseudo-tie transactions from their responsibility to pay for the congestion costs these transactions impose on the MISO Transmission System. MISO contends that Tilton's arguments regarding the MISO Tariff ignore that tariffs must be interpreted consistent with the Commission's policy and their regulatory context. MISO asserts that accepting Tilton's interpretation of the MISO Tariff and exempting it from MISO's congestion and other charges would violate the Commission's cost causation principles and the FPA undue discrimination requirements.

51. MISO asserts the availability of the firm transmission service that Tilton uses for its pseudo-tie transactions is premised on MISO's ability to redispatch the system and thus accommodate the additional congestion created by export transactions.⁷⁸ MISO contends that the customer's payment of the associated congestion costs entitles it to the available transmission capacity, as opposed to those customers who are unwilling to pay congestion, and that this has been clear since the formation of MISO's Day 2 market. MISO also contends that the Commission should not interpret the term "Financial Schedule" in isolation, but should harmonize it with the rest of the MISO Tariff, including the requirements applicable to all Transmission Customers. MISO asserts that Sections 33.2 and of 33.3 of Module B of the MISO Tariff establish the cost responsibility associated with the redispatch required to accommodate Tilton's transmission service transactions.

52. MISO asserts that the same principles are also reflected in other Module B provisions, such as Sections 22.2 and 23.2 of the MISO Tariff.⁷⁹ MISO disagrees with Tilton's argument that these provisions do not apply because its service does not involve redirected service. MISO asserts that this argument ignores the fact that requiring customers to pay these charges on redirects necessarily assumes that they are also paid on the original Receipt and Delivery Points. MISO contends that the fact that Tilton has not redirected service on its Transmission Service Reservation is, therefore, immaterial.

53. MISO also contends that Tilton is asserting a distinction without a difference when it claims that its pseudo-tie transactions are materially different from Export Schedules

⁷⁷ MISO Reply at 2.

⁷⁸ *Id.* at 5.

⁷⁹ *Id.* at 7.

(continued ...)

and Through Schedules, which are subject to the TUC.⁸⁰ MISO notes that Tilton admitted to using such schedules before it pseudo-tied to PJM and that its pseudo-tie was, in Tilton's words, "a substitute for the need to conduct those types of transactions."⁸¹ MISO explains that there is no substantive difference between an Export Schedule and a pseudo-tie as far as Tilton's usage of the MISO Transmission System is concerned.

54. MISO also explains that the TUC assessed on Tilton's transactions directly results from Tilton's injections and withdrawals from the MISO system, and that Tilton has not demonstrated that it is being assessed any similar transmission usage charge by PJM for injections and withdrawals on PJM's system that overlaps with the TUC.⁸² MISO contends, however, that if the Commission finds the current charges unjust and unreasonable, MISO's Transmission Customers and Market Participants should not bear the cost of curing any such overlap as they are not a party to the commercial decisions and requirements that result in this outcome. MISO also contends that the negative effects Tilton complains about are caused by the inherent inefficiency of pseudo-ties, and that the market-to-market coordination under the JOA is less efficient than full dispatch.

55. In addition, MISO notes that AMP, NIMPA, and the Dynegy Companies have submitted comments claiming that their pseudo-tie transactions have been assessed charges that are contrary to the MISO Tariff and seeking relief against MISO.⁸³ MISO argues that to the extent these parties are asserting legal claims against MISO, the FPA and the Commission's regulations require them to file a complaint and comply with all of the requirements that are applicable to complaints. MISO argues that there is no need for an evidentiary hearing, as requested by NIMPA. MISO asserts that if the Commission decides to address Tilton's congestion overlap claims, both RTOs should be involved.

IV. Related Proceedings

A. Other Pseudo-Tie Congestion Complaint Proceedings

56. On December 19, 2016, AMP filed a complaint against MISO in Docket No. EL17-29-000. AMP alleges that MISO deviated from provisions of the MISO Tariff by imposing congestion and administrative charges on AMP. AMP also alleges that MISO's imposition of such charges on AMP is unjust, unreasonable, and unduly discriminatory because, *inter alia*, it results in the duplicative assessment of congestion and

⁸⁰ *Id.* at 8.

⁸¹ *Id.* (quoting Tilton Answer at 6).

⁸² *Id.* at 11.

⁸³ *Id.*

administrative charges by MISO and PJM on pseudo-tied resources. On March 28, 2017, the Dynegy Companies filed a complaint against MISO in Docket No. EL17-54-000. The Dynegy Companies also allege MISO violated the MISO Tariff and allege that MISO has imposed duplicative charges for congestion and losses.

57. On December 21, 2016, NIMPA filed a complaint against PJM in Docket No. EL17-31-000. NIMPA alleges that PJM deviated from provisions of the PJM Tariff by imposing charges that assess congestion costs starting at the nodal point of their facilities within the MISO region, rather than at the interface between MISO and PJM. NIMPA further asserts that this method of calculating such charges is unjust, unreasonable, and unduly discriminatory because it results in duplicative costs associated with overlapping transmission service from MISO into PJM. On January 6, 2017, AMP also filed a complaint against PJM in Docket No. EL17-37-000. AMP's complaint is substantively similar to NIMPA's complaint.

58. In this order, we refer to the instant Complaint, and the four other complaints described above,⁸⁴ collectively as the MISO/PJM Pseudo-Tie Congestion Complaints.

B. RTOs' Phase 1 and Phase 2 Revisions

59. As part of their efforts to address the market and reliability challenges posed by the increased number of pseudo-tied resources from MISO to PJM, the RTOs proposed a two-phase resolution of certain issues involving the overlapping congestion charges affecting pseudo-tied resources. The RTOs explained that the then-effective JOA contained provisions for coordinated congestion management over Reciprocally Coordinated Flowgates.⁸⁵ The RTOs explained that when a Reciprocally Coordinated Flowgate binds simultaneously in both MISO and PJM, that Reciprocally Coordinated Flowgate can create overlapping congestion charges that a pseudo-tied resource pays or is paid.⁸⁶ The RTOs explained that congestion overlap occurs on the pseudo-tie transaction path between the source generation resource and sink interface for congestion associated

⁸⁴ See *supra* PP 56-57.

⁸⁵ The JOA is on file as MISO Rate Schedule 5 and as a PJM Interregional Agreement. A Reciprocally Coordinated Flowgate is a Flowgate that is subject to reciprocal coordination by Operating Entities. See JOA § 2.2.54. A Flowgate is defined under the JOA as “a representative modeling of facilities or groups of facilities that may act as significant constraint points on the regional system.” See *id.* § 2.2.24.

⁸⁶ The overlap could be a payment or a charge depending on the location of the constraint and the impact of the pseudo-tie.

with Reciprocally Coordinated Flowgates that are coordinated under the market-to-market settlement process.

60. The RTOs further explained that when both markets bind on the same Reciprocally Coordinated Flowgate, the Native Balancing Authority would assess the pseudo-tied resource a transmission usage charge for the energy transactions between the pseudo-tied resource and the interface with the Attaining Balancing Authority. At the same time, the Attaining Balancing Authority would also assess the pseudo-tied resource a charge for delivery of energy, injection and withdrawal, along the path between the physical resource and the interface. In this instance, both the Native Balancing Authority and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface.

61. On October 23, 2017, as amended January 29, 2018 and May 31, 2018, MISO and PJM filed identical proposed revisions to the JOA to address the congestion charge overlap (Phase 1 Revisions). The RTOs stated that the Phase 1 Revisions were intended to eliminate congestion payments between the RTOs associated with pseudo-tie impacts on Reciprocally Coordinated Flowgates, which recognize and account for the congestion payments made by the pseudo-tied customer. The RTOs further proposed to modify settlement treatment of pseudo-tie impacts to properly account for market flows and associated market-to-market congestion payments between the RTOs.

62. On July 31, 2018, the Commission accepted the Phase 1 Revisions, effective August 1, 2018.⁸⁷ The Commission found that the “Phase 1 Revisions represent an improvement over current practices and will address the majority of the overlapping congestion charges affecting pseudo-tied generation in MISO and PJM.”⁸⁸ The Commission noted that the claims that resources had been subject to overlapping congestion charges in the MISO/PJM Pseudo-Tie Congestion Complaint proceedings were beyond the scope of the Phase 1 Revisions proceeding and that such claims would be addressed in the respective complaint proceedings.⁸⁹

63. On June 1, 2018, PJM submitted its Phase 2 Revisions, proposing to modify the PJM Tariff and the PJM Amended and Restated Operating Agreement to (1) charge or credit pseudo-tie transactions from MISO to the PJM-MISO interface for real-time deviations from day-ahead schedules for congestion resulting from market-to-market

⁸⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 3 (2018) (Phase 1 Order).

⁸⁸ *Id.* P 22.

⁸⁹ *Id.* P 30.

(continued ...)

coordination pursuant to the JOA; and (2) provide a new transaction type to hedge exposure to financial risk for pseudo-tied resources from PJM into MISO (PJM Phase 2 Revisions). On July 31, 2018, the Commission accepted PJM's Phase 2 Revisions effective August 1, 2018, finding that they address concerns about the potential for congestion charge overlap.⁹⁰ Again, the Commission found that the claims about the overlapping congestion charges in the complaints were beyond the scope of the Phase 2 Revisions proceeding and stated that it would address the arguments raised in the MISO/PJM Pseudo-Tie Congestion Complaints in those complaint dockets.⁹¹

64. On October 2, 2018, as amended on January 19, 2019, MISO filed its Phase 2 Revisions to (1) address how Market Participants with pseudo-ties out of MISO can use Virtual Transactions to align FTRs and TUCs; and (2) modify Schedule 17 (Energy Market Support Administrative Service Cost Adder) to reduce the administrative charges assessed to Market Participants with a pseudo-tie of generation or load out of MISO (MISO Phase 2 Revisions). On March 19, 2019, the Commission accepted the MISO Phase 2 Revisions, subject to condition, effective March 1, 2019.⁹² The Commission found that the RTOs have demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion charge overlap.⁹³ The Commission stated that it would address the issue of relief for prior charges assessed by MISO, and the various arguments as to whether MISO had authority to assess TUCs—which include congestion charges—and administrative charges, in the MISO/PJM Pseudo-Tie Congestion Complaint proceedings.⁹⁴

V. Discussion

A. Procedural Matters

65. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R.

⁹⁰ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073, at P 17 (2018) (PJM Phase 2 Order).

⁹¹ *Id.* P 44.

⁹² *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186 (2019) (MISO Phase 2 Order).

⁹³ *Id.* PP 59, 61.

⁹⁴ *Id.* PP 52, 56, 63.

§ 385.214(d) (2018), the Commission will grant the late-filed motions to intervene of Direct Energy; Electric Power Supply Association; Enel Green Power North America, Inc.; Exelon; Rockland Power Partners II, LP; PJM; and the MISO Market Monitor given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

66. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

67. As the RTOs have filed, and the Commission has accepted, their Phase 1 and Phase 2 Revisions to address, *inter alia*, the congestion charge overlap issue, the RTOs' abeyance motion is dismissed as moot.

B. Substantive Matters

68. As discussed below, we grant the Complaint in part, deny it in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of December 19, 2016. We also consolidate the instant proceeding with the complaint proceedings in Docket Nos. EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 for purposes of settlement, hearing, and decision.

1. Tariff Authorization to Assess Congestion and Administrative Charges

69. We conclude that MISO's assessment of congestion costs and administrative charges on Tilton does not violate the MISO Tariff. Specifically, as discussed below, we find that the MISO Tariff authorizes MISO to assess congestion costs and administrative charges on pseudo-tie transactions. We also find that it was not a violation of the MISO Tariff for MISO to use Financial Schedules as a vehicle for imposing congestion and administration charges on Tilton.

a. Assessment of Congestion Charges and the Use of Financial Schedules

70. Tilton, through its agent EDF, is a MISO Transmission Customer taking service under Schedule 7 of the MISO Tariff (Long-Term Firm Point-to-Point Transmission

Service) to facilitate its pseudo-tie transactions.⁹⁵ Tilton is thus required to pay the applicable charges set forth on Schedule 7 “in addition to other applicable charges specified in the [MISO] Tariff.”⁹⁶ While Schedule 7 does not itself specify what other MISO Tariff charges are applicable, other provisions in the MISO Tariff identify congestion and loss charges as applicable to all transmission service transactions, including those associated with pseudo-tie transactions. Specifically, Attachment L (Credit Policy) recognizes that all transmission service transactions are subject to the costs of congestion and losses.⁹⁷ Moreover, Sections 23.2 (Limitations on Assignment or Transfer of Service) identifies congestion charges as among the transmission service costs for which Market Participants are financially responsible.⁹⁸ Tilton argues that Section 23.2 of the MISO Tariff is not applicable because Tilton is not an Assignee

⁹⁵ Schedule 7 of the MISO Tariff states, in part:

The Transmission Customer shall compensate the Transmission Provider each month for Reserved Capacity at the sum of the applicable charges set forth below in addition to other applicable charges specified in the [MISO] Tariff.

⁹⁶ MISO Tariff, Schedule 7.

⁹⁷ Attachment L of the MISO Tariff states, in part:

Because all Transmission Service transactions are subject to congestion costs and marginal losses, every Transmission Customer of [MISO] must either apply to be a Market Participant or be represented by a duly authorized Market Participant in good standing pursuant to the terms and conditions of this Credit Policy and the Agreements.

⁹⁸ Section 23.2 of the MISO Tariff states, in part:

If the Assignee requests a change in the Point(s) of Receipt or Point(s) of Delivery, or a change in any other specifications set forth in the original Service Agreement . . . the Market Participant shall be financially responsible for any Energy, Marginal Congestion Charge, and Marginal Losses associated with related Market Participant’s transactions as set forth in Sections 39.3.1 [Charges for Day-Ahead Energy and Operating Reserve Market Purchases], 39.3.3 [Payments and Charges for Financial and Interchange Schedules], 40.3 [Real-time Energy and Reserve Market Settlement] and 40.4 [Reserved].

(continued ...)

requesting a change in a delivery point.⁹⁹ We find this argument to be unpersuasive. We agree with MISO that the fact that the MISO Tariff requires customers to pay these charges on redirects necessarily assumes that they are also paid on the original Receipt and Delivery Points.¹⁰⁰ Such an interpretation is consistent with Attachment L.

71. Tilton also disputes the applicability of Section 23.2 by noting that Section 23.2 references other sections of the MISO Tariff and arguing that none of these provisions are applicable to Tilton.¹⁰¹ We disagree. Section 23.2 references, *inter alia*, Section 40.4. While Section 40.4 is reserved, it has a non-reserved Subsection 40.4.2 (Financial Schedule Settlements) that provides, in part, a calculation for the TUC, i.e., the costs of congestion and losses to be assessed to buyers and sellers under Financial Schedules designated to be settled in the Real-Time Energy and Operating Reserve Market.¹⁰²

72. We note that pseudo-tie transactions that utilize MISO's Transmission System cause real-time congestion costs on MISO's Transmission System,¹⁰³ and we find that MISO properly settles the congestion charges associated with such transactions as a part of the MISO real-time market. Consistent with this finding, Section 2.7.3 of the Market Settlements BPM clarifies that the settlement of pseudo-tied generation within the MISO Balancing Authority Area to an external Balancing Authority Area is "only applicable to the [real-time market]." We further note that it has been MISO's standard practice since it launched its energy markets in 2005 to assign Financial Schedules to pseudo-tie transactions, as reflected in MISO's BPMs.¹⁰⁴ Thus, for more than ten years, MISO has

⁹⁹ Tilton Answer at 8.

¹⁰⁰ See MISO Reply at 7. It is unreasonable to interpret the MISO Tariff to suggest that pseudo-tie transactions, like Tilton's, will only be assessed congestion if the transaction is assigned to another party. The assignment of the transmission service, in and of itself, has not been shown to contribute to congestion on a transmission system.

¹⁰¹ Tilton Answer at 7-8; *id.* at Att. 1, 1-2.

¹⁰² MISO Tariff, Module C, Section 40.4.2.

¹⁰³ See *infra* P 79.

¹⁰⁴ Section 2.7.3 of the Market Settlements BPM states, in part "[w]ith these [pseudo-tied] volumes, a Pseudo Real-Time Financial Schedule is created." Additionally, we note that Section 2.7.3 of the Market Settlements BPM states, in part, that "[p]seudo-tied Generation Resources are subject to congestion and loss charges between their Resource and the Interface CPNode where the energy is being exported."

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used the procedures and capabilities of Financial Schedules for the purpose of settling MISO Tariff-required congestion and losses charges associated with pseudo-tie transactions.¹⁰⁵ We recognize both that the MISO Tariff does not explicitly state that a Financial Schedule will be created for a pseudo-tie transaction and that the MISO Tariff's definition of Financial Schedule refers to "two Market Participants." However, given that the MISO Tariff does not specify what settlement vehicle MISO must use to assess congestion charges on pseudo-tie transactions, and such charges are settled in the real-time market, we find it reasonable that MISO assigned Financial Schedules to Tilton's pseudo-tie transactions and assessed congestion costs via the TUC.¹⁰⁶

73. In sum, we find that the MISO Tariff authorizes MISO to assess congestion and loss charges on Tilton, and that MISO did not violate its Tariff by using Financial Schedules to do so. Schedule 7, Attachment L, and Section 23.2 of the MISO Tariff recognize and provide for the imposition of congestion and loss charges on Tilton, while Section 40.4.2—when read in conjunction with these provisions—specifies the calculation of such charges.

b. Assessment of Administrative Charges

74. We also find that the MISO Tariff authorizes the assessment of administrative charges contained in Schedules 10, 17 and 24 on pseudo-tied resources.

75. Schedule 10 (ISO Cost Recovery Adder) states, in part, "The cost recovery mechanism and charges . . . are applicable to all Transmission Customers . . ." In Schedule 10, the specific rate applicable to point-to-point transmission service is established as a function of, among other things, the capacity reserved, and the duration of the reservation. Because Tilton is a Transmission Customer reserving point-to-point transmission service, Tilton is responsible for paying Schedule 10 charges.

76. Schedule 17 (Energy and Operating Reserve Markets Support Administrative Service Cost Recovery Adder) states, in part:

Energy and Operating Reserve Markets Support Administrative Service is provided by the Transmission Provider to all Market Participants that participate in Transactions using the Transmission System . . . The billing determinants for the [adder] shall be: 1) all Actual Energy Injections into

¹⁰⁵ MISO Answer at 15.

¹⁰⁶ MISO explains that by utilizing modified capabilities established to administer Financial Schedules, MISO was able to ensure that Tilton's and other pseudo-tied Market Participants' commercial choices are properly supported. MISO Answer at 13.

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the Transmission System by all Market Participants . . . *including deliveries to the Transmission System from generation located both within the Transmission System and outside of the Transmission System*, 2) all Actual Energy Withdrawals from the Transmission System by all Market Participants . . . *including MWh delivered to loads located both within the Transmission System and outside of the Transmission System including all out and through transactions using the Transmission System . . .*” (emphases added).¹⁰⁷

We find that the “including” clauses identified above are broad enough to recover the administrative charge from Tilton. Specifically, because Tilton, through its agent, is a Market Participant that participates in transactions using the Transmission System and those transactions include deliveries to the Transmission System to serve load located outside of the Transmission System, we find that Tilton is liable for Schedule 17 charges.

77. Schedule 24 (Local Balancing Authority Cost Recovery Adder) states, “Local Balancing Authorities shall recover their costs incurred as a result of implementing the Markets and Services pursuant to [the MISO] Tariff . . . For the purposes of allocating and collecting these costs, the Local Balancing Authority Costs shall be recovered together with the Schedule 17 costs and in the same manner as the Schedule 17 costs.” Because we find above that Tilton is responsible for charges under Schedule 17, Tilton is also responsible for charges under Schedule 24 pursuant to the terms of Schedule 24. We also note that, as MISO has explained, although the Tilton Facility is pseudo-tied to PJM’s Balancing Authority Area for purposes of PJM’s markets, it is still interconnected to and physically injecting energy into the Transmission System in the Ameren Illinois Local Balancing Authority as far as reliability is concerned.¹⁰⁸ Accordingly, we disagree with Tilton’s suggestion that Schedule 24 is not applicable to its pseudo-tie transactions.

2. **Whether MISO’s Assessment of Congestion and Administrative Charges Is Unjust, Unreasonable, Unduly Discriminatory or Preferential**

78. As discussed below, we find Tilton has not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess congestion and administrative charges on Tilton. However, we find that there was the potential for the RTOs to assess unjust and unreasonable overlapping or duplicative congestion charges prior to the effective dates of the Phase 1 and Phase 2 filings, and thus we establish hearing and settlement procedures to consider the extent to which the Complainants in the

¹⁰⁷ MISO Tariff, Sched. 17.

¹⁰⁸ See MISO Answer at 19.

MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to such charges and are due refunds.

79. We find that Tilton has not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess congestion and administrative charges on Tilton. MISO, Entergy, and the MISO Market Monitor have explained that Tilton's use of the MISO Transmission System to facilitate Tilton's pseudo-tie transactions causes congestion and administrative costs on the MISO Transmission System. Tilton has not disputed this fact in its Complaint or its Answer. Thus, exempting Tilton from these charges would require MISO's Transmission Customers and Market Participants to subsidize benefits that Tilton obtains from its pseudo-tie arrangement with PJM. Specifically, exempting Tilton from congestion charges would shift costs caused by Tilton's transactions to others in the form of FTR Shortfalls or Real-time Congestion Uplifts. Similarly, exempting Tilton from the administrative charges under Schedules 10, 17, and 24 would result in other Transmission Customers and Market Participants subsidizing the services and benefits that Tilton receives under these Schedules.¹⁰⁹

80. Tilton and the Dynegey Companies contend that MISO's congestion charges are not part of the PJM LMP price signal, and Tilton argues that MISO's congestion charges cannot effectively be hedged by the use of FTRs or other MISO hedging instrument. However, these contentions, even if true, do not demonstrate that MISO's congestion charges are unjust, unreasonable, unduly discriminatory or preferential.¹¹⁰

81. Further, we find that it is not unduly discriminatory for Tilton to be assessed congestion costs that it would not be assessed if its generation were physically located within PJM. The Tilton Facility is not similarly situated to generation physically located in PJM because it is physically located in MISO and, thus, Tilton imposes costs on the MISO Transmission System when it injects energy onto the MISO Transmission System.

82. We also reject Tilton's claim that the administrative charges MISO assesses on Tilton are unjust and unreasonable because they are duplicative with administrative fees PJM charges for the same MWh of energy produced. As the MISO Market Monitor

¹⁰⁹ We agree with MISO that Tilton's claimed exemption is particularly untenable given the fact that MISO's Schedule 7 through-and-out rate to PJM is zero. *See id.* at 20.

¹¹⁰ Further, Tilton could hedge the costs to some extent with the purchase of FTRs. In addition, we note that pseudo-tied resources may also use Virtual Transactions as a hedging mechanism. *See, e.g.,* MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 43, 57. While such a hedge may not be a perfect hedge, we are not persuaded that the lack of a perfect hedge for Tilton makes the underlying congestion charges unjust and unreasonable.

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explains, pseudo-tied resources impose administrative costs on both MISO and PJM.¹¹¹ Thus, we find that MISO's assessment of administrative charges under Schedules 10, 17, and 24 has not been shown to be unjust, unreasonable, unduly discriminatory or preferential.

83. Finally, Tilton argues that it has been subject to overlapping congestion charges assessed by the RTOs. As discussed above, the Commission has accepted the RTOs' Phase 1 and Phase 2 filings to address prospective concerns regarding such charges. Further, the MISO Phase 2 Order found that the RTOs have demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion overlap.¹¹² Thus, we find that the JOA and other sections of the MISO Tariff as currently on file are just and reasonable, and we will not require MISO to make further Tariff revisions.

84. However, with respect to Tilton's argument that it has been subject to overlapping congestion charges assessed by the RTOs prior to the acceptance of Phase 1 and Phase 2 Revisions, based on the record before us and the statements by the RTOs in making their Phase 1 and Phase 2 Revisions,¹¹³ we find that the potential for overlapping or duplicative charges for congestion existed prior to the effective dates of the revisions made by the Phase 1 and Phase 2 filings. The RTOs have stated, and no party disputes, that there was a potential for such overlapping or duplicative congestion charges in certain circumstances, specifically, when both markets bound on the same Reciprocally Coordinated Flowgate under the market-to-market process.¹¹⁴ We therefore grant

¹¹¹ MISO Market Monitor Comments at 6.

¹¹² MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61.

¹¹³ See, e.g., MISO Answer at 4, 7; *id.*, Att. A, Ex. 1 at 12-16; RTOs January 25, 2017 Joint Motion to Hold Proceedings in Abeyance at 2-3; RTOs March 27, 2017 Status Update at 1-3; Phase 1 Order, 164 FERC ¶ 61,069 at PP 3-5, 8; PJM Phase 2 Order, 164 FERC ¶ 61,073 at PP 7-8; MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 30-31 (citations omitted).

¹¹⁴ As discussed above, prior to the acceptance of the Phase 1 and Phase 2 Revisions, when both markets bound on the same Reciprocally Coordinated Flowgate under the market-to-market process, the Native Balancing Authority assessed the pseudo-tied resource a transmission usage charge for the energy transactions between the pseudo-tied resource and the interface with the Attaining Balancing Authority. At the same time, the Attaining Balancing Authority also assessed the pseudo-tied resource a charge for the energy transactions between the pseudo-tied resource and the delivery point within

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Tilton's Complaint, in part, finding that to the extent Tilton was assessed overlapping or duplicative congestion charges by the RTOs, such charges were unjust and unreasonable.¹¹⁵

85. We find that determining what refunds are appropriate to Tilton to remedy the overlapping or duplicative congestion charges raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Because of the existence of common issues of law and fact regarding the extent to which the Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds, we grant the motions to consolidate and consolidate the instant Complaint proceeding with the complaint proceedings in Docket Nos. EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 for purposes of settlement, hearing, and decision. We believe that consolidating these proceedings will promote administrative efficiency.

86. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.¹¹⁶ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.¹¹⁷ The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with

the Attaining Balancing Authority. In this instance, both the Native Balancing Authority and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface. *See supra* P 60; *see also* Phase 1 Order, 164 FERC ¶ 61,069 at P 4.

¹¹⁵ *See, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,163, at P 222 (2004) (requiring MISO to modify its proposal to "clarify that external transactions will not be double-charged for congestion and losses").

¹¹⁶ 18 C.F.R. § 385.603 (2018).

¹¹⁷ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

87. In cases where, as here, the Commission institutes an investigation on complaint under Section 206 of the FPA, Section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month refund period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,¹¹⁸ we will set the refund effective date at the earliest date possible, i.e., August 25, 2016.

88. Section 206(b) also requires that, if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to Section 206, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. Based on our review of the record, we expect that, if this case does not settle, the presiding judge should be able to render a decision within approximately twelve months of the commencement of hearing procedures, or May 18, 2020. Thus, we estimate that, absent settlement, we would be able to issue our decision within approximately eight months of the filing of briefs on and opposing exceptions, or by January 18, 2021.

The Commission orders:

(A) Tilton's Complaint is hereby granted, in part, and denied, in part, as discussed in the body of this order.

(B) Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000 are hereby consolidated for purposes of settlement, hearing, and decision.

(C) The RTOs' joint motion to hold the proceeding in abeyance is hereby dismissed, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Section 402(a) of the Department of Energy Organization Act and by the FPA, particularly Section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held

¹¹⁸ See, e.g., *Seminole Elec. Coop., Inc. v. Fla. Power & Light Co.*, 65 FERC ¶ 61,413, at 63,139 (1993); *Canal Elec. Co.*, 46 FERC ¶ 61,153, at 61,539, *reh'g denied*, 47 FERC ¶ 61,275 (1989).

concerning the Complaint. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

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

(F) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the parties' progress toward settlement.

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

(H) The refund effective date established pursuant to Section 206(b) of the FPA is August 25, 2016, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.