

168 FERC ¶ 61,176
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

American Electric Power Service Corporation

Docket No. EL17-89-000

v.

Midcontinent Independent System Operator, Inc.
Southwest Power Pool, Inc.

ORDER ON COMPLAINT AND ESTABLISHING REFUND EFFECTIVE DATE

(Issued September 19, 2019)

1. On September 15, 2017, American Electric Power Service Corporation (AEP), on behalf of its operating company affiliate, Southwestern Electric Power Company (SWEPCO), filed a complaint against Midcontinent Independent System Operator, Inc. (MISO) and Southwest Power Pool, Inc. (SPP) 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
2. AEP alleges that MISO violated the Joint Operating Agreement between MISO and SPP (JOA) with respect to the assessment of congestion charges on load that is pseudo-tied out of MISO into SPP. AEP further alleges that the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) and Business Practices Manual (BPM) are unjust and unreasonable with respect to the assessment of congestion charges on such load. As discussed below, we grant the Complaint in part, deny it in part, and establish a refund effective date of September 15, 2017.

I. Complaint

3. AEP states that SWEPCO is a generation owner and load serving member of SPP, and that it also serves load requirements of several wholesale customers that are physically located in MISO. AEP states that the City of Minden, Louisiana (Minden) is one of these wholesale customers. AEP states that Minden is electrically two buses away from SWEPCO's transmission system in the SPP footprint, and is physically located on

¹ 16 U.S.C. §§ 824e, 825h (2018).

² 18 C.F.R. § 385.206 (2019).

Entergy Louisiana, LLC's transmission system, which is in the MISO footprint. AEP states that SWEPCO's resources have provided energy, capacity, and ancillary services to Minden, which has been pseudo-tied to the SPP region, since 1995. AEP explains that, from the perspective of power flows, an energy transfer from SWEPCO's generation to the Minden load must flow through SPP's non-market-to-market flowgates, MISO's non-market-to-market flowgates, and the SPP/MISO market-to-market flowgates.³ AEP notes, however, that in order to serve the Minden load, AEP is not required to, and does not, submit anything in the MISO day-ahead and real-time markets except for the actual metering data on the Minden load after the operating day.

4. AEP asserts that, after Entergy was integrated into MISO in December of 2013,⁴ Minden's pseudo-tied load became subject to real-time congestion and loss charges under the MISO Tariff, which were intended to reflect the congestion and loss impacts of serving the Minden load on MISO's system.⁵ AEP alleges that, although the SPP Integrated Marketplace was designed to ensure collaboration in assessing and managing congestion between SPP and neighboring regional transmission organizations (RTOs) like MISO,⁶ in actuality, coordination between MISO and SPP has been inadequate. AEP asserts that Minden is being simultaneously charged congestion by both RTOs for the same pseudo-tie, thus "double-counting" the impact of the pseudo-tie. AEP states that while the issue of double counting of congestion charges has been the topic of discussion at stakeholder meetings and the subject of multiple presentations prepared by the RTOs, the issue has not been resolved.

5. AEP argues that by imposing market-to-market congestion charges on loads pseudo-tied out of MISO into SPP, MISO violates the JOA and improperly double charges for congestion.⁷ AEP claims that MISO inappropriately charges pseudo-tied load for real-time congestion and loss spreads between Point of Receipt and Point of Delivery in the settlement process, even though, according to AEP, the market-to-market portion of the congestion is intended to be handled through the JOA for both the day-ahead and real-time processes. AEP notes that Attachment 1 of the JOA (Congestion Management

³ Complaint at 4-5.

⁴ Presumably, AEP refers to the Entergy Operating Companies, which currently include: Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; and Entergy Texas, Inc.

⁵ Complaint at 3.

⁶ Both MISO and SPP are Commission-approved RTOs. In this order, MISO and SPP are collectively referred to as the RTOs.

⁷ Complaint at 5-6, 16.

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Process, or CMP) states that “internal generation” used to determine Market Flows⁸ for each RTO includes generators that are pseudo-tied into that market area serving “internal load,” which would include load pseudo-tied into the market.⁹ AEP stresses that this provision of the JOA means congestion associated with pseudo-ties into a market is, in fact, intended to be addressed by the receiving RTO (i.e., SPP), and not the RTO in which the load is physically located (i.e., MISO).¹⁰ AEP states that SPP charges Minden for the market-to-market congestion for the full flow path from SWEPCO’s generation to the Minden load. AEP alleges that MISO appears to have applied sections of its Tariff and BPM to charge Minden for additional market-to-market congestion. AEP argues that by not complying with the provisions of the JOA, which address congestion management for load pseudo-tied out of MISO into SPP, MISO has violated the terms of the JOA, and AEP asserts that the Commission should order refunds of the amount overcharged.

6. Further, AEP argues that the MISO Tariff and BPM are unjust, unreasonable, and unduly discriminatory.¹¹ AEP states that MISO provides Minden with Auction Revenue Rights (ARRs) that can be converted to Financial Transmission Rights (FTRs)¹² that are settled in the day-ahead market. AEP notes, however, that MISO does not allow pseudo-tied loads to be financially settled in the day-ahead market and, instead, imposes on such loads real-time congestion charges of both market-to-market and non-market-to-market constraints that MISO binds. AEP alleges that, as a result, the FTRs resulting from the ARRs provide highly ineffective congestion hedges for the real-time congestion charges

⁸ The JOA defines Market Flows as “the calculated energy flows on a specified Flowgate as a result of dispatch of generating resources serving market load within a Market-Based Operating Entity’s market.” *E.g.*, JOA, Section 2.2.33.

⁹ AEP notes that section 4.1 of the CMP states:

Market Flows represent the impacts of internal generation [including generators pseudo-tied into the market area and excluding generators pseudo-tied out of the market area] serving internal load [including load pseudo-tied into the market area and excluding load pseudo-tied out of the market area] and tagged grandfathered transactions within the market area.

¹⁰ In this situation where the pseudo-tied load is physically located in MISO, SPP is referred to as the “attaining BA” and MISO as the “native BA.”

¹¹ *E.g.*, Complaint at 2.

¹² AEP states that, in SPP, AEP is allocated ARRs that can be converted to Transmission Congestion Rights to offset congestion charges in day-ahead settlements.

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against the Minden load.¹³ Accordingly, AEP argues that if the Commission does not direct MISO to cease assessing congestion charges on loads pseudo-tied out of MISO, the Commission should direct MISO to allow pseudo-ties to settle financially based on day-ahead market prices.

7. In addition, AEP argues that it is unduly discriminatory for MISO to assess congestion charges on load that is pseudo-tied out of MISO for non-market-to-market congestion costs that would not be assessed if the load were physically located within SPP.¹⁴ AEP asserts that the Minden load, even though it is part of SPP's network load, pays for using MISO's transmission system via Network Integration Transmission Service fees and for MISO's non-market-to-market congestion. AEP states that, conversely, owners of generation, load, and energy transfers outside of MISO's footprint do not get charged by MISO for their contributions to MISO's non-market-to-market congestion, and they do not pay to use MISO's transmission system.¹⁵

8. AEP asserts that MISO's congestion charges have resulted in an overpayment to MISO of at least \$963,974 for the period from June 1, 2016 to September 30, 2016.¹⁶ AEP states that this overcharge value represents the inappropriate congestion charges associated with the MISO market-to-market flowgate LN MINDE3_SAREPT3 A flo ELDORADO-MT OLIVE 500.¹⁷ To support this value, AEP presents a calculation for August 23, 2016, which is then applied to the entire period of June through September, 2016.¹⁸ AEP states that it has been unable to conduct a full analysis from June 1, 2016 to

¹³ Complaint at 5.

¹⁴ *Id.* at 18.

¹⁵ *Id.* at 18-20.

¹⁶ *Id.* at 14, 21.

¹⁷ *Id.* at 21.

¹⁸ AEP also presents an example of a real-time congestion event that occurred on July 29, 2016, which AEP claims provides a clear example of the excessive charges faced by pseudo-tied loads. *Id.* at 12-13. AEP claims that between 7 p.m. and 8 p.m. on July 29, 2016, both the MISO and SPP transmission systems were under congestion in real-time. AEP claims that according to MISO's data, an hourly market-to-market payment of \$29,198.40 from SPP to MISO was incurred for the LN MINDE3_SAREPT3 A flo ELDORADO-MT OLIVE 500 flowgate. AEP asserts that the impact of this flowgate for that specific hour was factored in the congestion components of pricing nodes posted by both RTOs. *Id.* at 13 (citing *id.*, Guo Aff. ¶ 12 and Att. 1). Thus, AEP concludes that Minden customers actually paid twice for the congestion cost on this flowgate: once to SPP and again to MISO. *See id.*, Guo Aff., Att. 1 at 3.

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the present, as MISO does not make available actual data on generation shift factors with respect to real-time market-to-market binding constraints. Based on its assertion that MISO violated the JOA and inappropriately applied the MISO Tariff, AEP asks that the Commission exercise its jurisdiction under section 309 of the FPA to direct MISO to calculate the full amount of excess charges and to refund this amount back to June 1, 2016. AEP further requests that MISO revise the MISO Tariff and BPM to ensure that the JOA is the controlling authority for assessment of market-to-market congestion charges. AEP also requests that the Commission direct the RTOs to coordinate with each other to examine their congestion charge practices and make necessary revisions to ensure that pseudo-tied load out of MISO is no longer overcharged.¹⁹

II. Notice of Filing and Other Pleadings

9. Notice of AEP's Complaint was published in the *Federal Register*, 82 Fed. Reg. 44,403 (2017), with interventions and protests due on or before October 5, 2017. On October 2, 2017, MISO filed a motion for a seven-day extension of time to extend the comment period to October 12, 2017. On October 11, 2017, the Commission granted this motion.

10. The Arkansas Public Service Commission; the Council of the City of New Orleans, Louisiana; the Iowa Utilities Board; the Missouri Public Service Commission; and the Organization of MISO States filed notices of intervention. Alliant Energy Corporate Services, Inc.; Central Power Electric Cooperative, Inc.; the City of Minden, Louisiana; the City of Prescott, Arkansas; Enel Green Power North America, Inc.; Entergy Services, Inc. (Entergy);²⁰ Mid-Kansas Electric Company, LLC; NRG Power Marketing LLC and GenOn Energy Management, LLC; Southern Company Services, Inc.;²¹ Sunflower Electric Power Corporation; Wabash Valley Power Association, Inc.; Western Farmers Electric Cooperative; and Xcel Energy Services Inc. filed timely motions to intervene. The Louisiana Public Service Commission filed a motion to intervene out-of-time.

¹⁹ AEP states that it has identified SPP as a respondent in the Complaint as necessary to accomplish this objective.

²⁰ Entergy is intervening on behalf of the five Entergy Operating Companies: Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; and Entergy Texas, Inc.

²¹ Southern Company Services, Inc. is intervening by and on behalf of Alabama Power Company.

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11. On October 5, 2017, Entergy filed a protest. On October 12, 2017, MISO and SPP filed answers to the Complaint. On November 3, 2017, AEP filed a motion for leave to answer and an answer to MISO's and SPP's answers.

A. Answers to the Complaint

12. In MISO's answer, MISO states that AEP is a MISO Transmission Customer that utilizes Network Integration Transmission Service under the MISO Tariff to pseudo-tie the Minden load into the SPP Balancing Authority (BA) for energy and interchange accounting purposes and to facilitate participation in the SPP markets.²² MISO states that under the Minden Network Integration Transmission Service Agreement, Minden is treated like all network loads for transmission service purposes. MISO asserts that it charges Minden for congestion and losses on the MISO transmission system between the MISO-SPP border and the physical location of the Minden load inside MISO, as required by the MISO Tariff. MISO further argues that nothing in the JOA states that pseudo-tied loads should be exempt from the congestion charges that are otherwise applicable under the RTOs' individual tariffs. MISO contends that simply because different types of congestion charges related to the Minden load result from two rate schedules (the JOA and the MISO Tariff) does not mean that MISO violated the JOA.²³

13. MISO asserts that the quoted language in section 4.1 of the CMP simply describes what is included in the JOA parties' Market Flows.²⁴ MISO argues that this language reflects the fact that pseudo-tied loads are managed as part of the attaining BA's (i.e., SPP's) Market Flow because pseudo-tied loads are included in the attaining BA for forecasting and energy and interchange accounting purposes.²⁵ MISO argues that nothing in this provision eliminates or modifies the otherwise applicable congestion charges under the RTOs' individual tariffs, which apply to pseudo-ties.

14. MISO further argues that AEP's request for an exemption from congestion costs that are caused by the Minden load violates the Commission's cost causation principle because other market participants would be required to bear the costs if Minden does not pay for the congestion and losses it causes on the MISO transmission system.²⁶ MISO notes that Minden's load is not similarly situated to SPP's internal loads and generation

²² MISO Answer at 7. Although MISO states that AEP is its Network Customer, both the Complaint and MISO Answer state that MISO "charges" Minden for congestion.

²³ *Id.* at 3.

²⁴ *Id.* at 12-13.

²⁵ *Id.* at 13.

²⁶ *Id.* at 4, 18-20

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as they relate to congestion on the MISO transmission system, and thus, the Minden load should not be treated like those entities for congestion purposes.

15. MISO disagrees with AEP that the Commission should order MISO to revise its Tariff and the BPM to allow pseudo-ties to settle financially based on day-ahead market prices.²⁷ MISO contends that AEP and Minden's ARR allocation for summer peak hours exceeded their pseudo-tie transaction schedules, which provided a significant hedge against all MISO congestion costs associated with serving the Minden load.²⁸ MISO also asserts that it provides multiple market instruments that allow market participants to achieve their requested outcome. MISO states that, even though AEP already uses ARRs to hedge its congestion charges, AEP could have used virtual bids and supply offers in MISO's day-ahead market to align its congestion charges with FTR hedges, which would have stabilized price differences between day-ahead and real-time markets and would have provided appropriate mitigation of congestion exposure. Further, MISO notes that the Commission does not require public utilities and RTOs to offer special terms and conditions to accommodate pseudo-tie requests, and, as such, MISO does not see a need to revise the MISO Tariff to accommodate AEP's preference for this pseudo-tie.²⁹

16. MISO acknowledges that, for pseudo-tied loads, in limited circumstances some congestion cost overlap occurs between MISO's and SPP's markets on certain flowgates that the RTOs coordinate as part of the market-to-market process, but MISO states that this overlap does not indicate any Tariff violation.³⁰ Specifically, MISO states that "the overlap arises due to the independent application of the [market-to-market] process under the JOA and the RTOs' congestion management provisions under their respective tariffs."³¹ According to MISO, the pseudo-tie is assessed a transmission usage charge in the native BA and a congestion charge in the attaining BA, and both of these charges include congestion impacts from the market-to-market flowgates, which is why the congestion overlap may exist in certain circumstances.³² MISO witness Vannoy further explains how the congestion management procedures result in a congestion charge overlap for pseudo-tie transactions:

²⁷ *Id.* at 24.

²⁸ *Id.* at 23.

²⁹ *Id.* at 22.

³⁰ *Id.* at 5, 8-9 (citing Prepared Direct Testimony of Kevin A. Vannoy on behalf of MISO, at 12-17 (Vannoy Test.)); *see also id.* at 15, 25.

³¹ *Id.* at 5.

³² *Id.* at 8.

For pseudo-tied loads, a congestion overlap occurs on the pseudo-tie transaction path between the External Interface and the pseudo-tied load for congestion associated with [Reciprocally Coordinated Flowgates (RCFs)] that are coordinated under the [market-to-market] process. In the Native [BA], the pseudo-tied load customer is assessed congestion costs between the border and the pseudo-tied load location within MISO. In the Attaining [BA], on RCFs, congestion charges along the path between the physical load . . . and the Interface, are collected from . . . the pseudo-tie market participant . . . [and] is included in the Market Flow calculation of the Attaining BA. This may result in congestion payments from the Attaining [BA] to the Native [BA] for congestion management under the existing [market-to-market] settlement rules. Because the [market-to-market] coordination process applies only to RCFs, congestion payments between MISO and SPP under the [market-to-market] process arise only in connection with congestion on RCFs and only when they bind³³

MISO also states that the RTOs are undergoing a stakeholder process to discuss prospective solutions to the congestion overlap issue.³⁴

17. MISO argues that AEP fails to demonstrate that Minden has been exposed to congestion charge overlap and, therefore, does not meet the necessary burden of proof requirements.³⁵ MISO states that the congestion overlap applies only to market-to-market flowgates and only when they are bound in dispatch in both RTOs. MISO asserts that AEP's argument of being double charged for congestion should be dismissed as unsupported, because AEP did not establish that Minden's transactions were affected by the congestion overlap and AEP failed to provide any documentation that might support its claim. Moreover, MISO requests that if the Commission requires changes to any provision in the MISO Tariff, that those changes be applied prospectively and that the Commission should not require MISO to pay refunds to AEP.³⁶

³³ Vannoy Test. at 16-17 (internal citations omitted).

³⁴ MISO Answer at 5.

³⁵ *Id.* at 5-6, 25.

³⁶ *Id.* at 25-26.

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18. In its answer to the Complaint, SPP notes that AEP does not allege any tariff or JOA violation by SPP, nor does AEP seek any sort of remedy from SPP.³⁷ However, SPP explains that because SPP is a party to the JOA and engages in market-to-market transactions with MISO, a Commission order may affect the manner in which the relevant provisions of the JOA are to be interpreted and implemented thereby affecting SPP. SPP acknowledges that “[w]hen [market-to-market] constraints are bound in more than one market, it is reasonable to conclude that some overlap may occur in the congestion settlements by each individual market for pseudo-tied assets.”³⁸ SPP states that it would support any coordination between the RTOs resulting from a Commission order and that it is committed to any outcome that is just and reasonable for its market participants. SPP states that any just and reasonable determination of the treatment of pseudo-tied resources or loads in an energy market should be reflective of the costs borne by each RTO in order to accommodate the entity seeking to pseudo-tie.

B. Entergy Protest

19. Entergy argues that the Commission should deny the Complaint, asserting that AEP has not met its burden to show that the MISO Tariff or the rates charged have been unjust and unreasonable.³⁹ Entergy argues that MISO has properly charged AEP for its use of MISO’s system, as directed by the MISO Tariff and BPM. Furthermore, Entergy notes that although AEP complains of real-time charges from MISO, AEP makes no demonstration it has paid real-time charges to SPP for the same load.

20. Entergy argues that AEP’s calculation of the MISO overcharges for congestion is flawed and lacks support.⁴⁰ First, Entergy notes that AEP’s claim of congestion overcharges is based on a single hour during one of the hottest months in the year in Louisiana and that AEP does not show that it actually paid this charge by, for example, producing an invoice for the charge. Second, Entergy asserts that AEP provides no other support than the shadow price effect in one hour in August of 2016 for AEP’s estimate of \$963,974 in alleged overlapping congestion charges for the period from June 1, 2016 to September 30, 2016. Further, Entergy argues that because AEP has not submitted the supporting data for its estimate or described how it arrived at the estimate, Entergy cannot determine whether AEP’s calculation includes credits AEP received when congestion reversed during that period. Entergy also asserts that AEP fails to show whether revenues received through ARRs or FTRs offset its congestion charges.

³⁷ SPP Answer at 3.

³⁸ *Id.* at 4-5.

³⁹ Entergy Protest at 6.

⁴⁰ *Id.*

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21. In addition, Entergy claims that AEP does not seem to be utilizing features of MISO's markets that would allow for hedging of real-time schedules in the day-ahead markets, including the use of virtual schedules.⁴¹ Entergy states that either AEP does not use virtual schedules, which might further reduce congestion costs owed to MISO for the Minden load, or AEP does not account for the virtual schedule in its calculation of the amount overcharged.

22. Entergy also raises many of the same arguments as MISO. Entergy contends that AEP's assertion as to how congestion should be assessed violates the Commission's cost causation principle.⁴² Entergy explains that "cost causation requires that 'all approved rates reflect to some degree the costs actually caused by the customer who must pay them.'"⁴³ Entergy notes that if MISO did not follow cost causation principles, these congestion costs would shift to other MISO market participants and burden these participants with costs that they did not cause. Entergy also asks that the Commission reject AEP's argument that real-time congestion charges assessed by MISO are unduly discriminatory because these charges are not assessed to generation and load physically located outside of MISO's footprint. Entergy further contends that, by pseudo-tying the load out of MISO and into SPP, AEP has voluntarily subjected the Minden load to congestion charges for the use of both RTOs.

C. AEP Answer

23. AEP asserts that, contrary to MISO's assertions, the definition of Market Flows in the CMP is, in fact, fundamental to the determination of congestion charges.⁴⁴ AEP notes that section 4.1 of the CMP is fundamental to management of coordination for market-to-market congestion because the provision describes what is to be considered in each RTO's calculation of Market Flows, which in turn influences the allocation of capability sharing, as well as the determination of the congestion impact associated with an RTO for every market-to-market flowgate.

24. AEP notes that, according to the JOA, loads pseudo-tied into SPP fall entirely under SPP's purview for market-to-market congestion management and assessment, and AEP explains that, because AEP was fully charged by SPP for the congestion impact of serving the Minden load on market-to-market flowgates, MISO's congestion charges for

⁴¹ *Id.* at 7.

⁴² *Id.* at 8.

⁴³ *Id.* (quoting *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992)).

⁴⁴ AEP Answer at 2.

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the same load in its Market Flows are duplicative.⁴⁵ AEP claims that the JOA manages market-to-market congestion payments between the RTOs, and therefore MISO should not have charged the Minden load for any congestion on MISO market-to-market flowgates.

25. AEP argues that “overlapping” charges are not justified.⁴⁶ AEP contends that contrary to MISO’s suggestion, MISO has applied the MISO Tariff in a manner that conflicts with the prescribed manner in which pseudo-tied load was supposed to be considered as part of the market-to-market coordination process. AEP asserts that there would be no point in conducting pseudo-tie arrangements if both RTOs were still permitted to charge the load for the same congestion.

26. Further, AEP asserts that it is simply seeking the same financial treatment that generation and load physically located outside of MISO receive, and that MISO’s cost shifting concerns are unpersuasive as the Minden load did not cause the congestion.⁴⁷ AEP alleges that MISO has never managed the impact of Minden’s load in MISO’s Market Flows on market-to-market flowgates. AEP argues that this implies that the Minden load has no impact on revenue adequacy in MISO’s operation because RTOs are not expected to collect congestion dollars from uncompensated parallel flows. Furthermore, AEP claims that because the Minden load did not cause the congestion for which it is being charged by MISO, it is unjust and unreasonable for MISO to assess charges to such load. Thus, AEP argues that its requested relief does not result in improper cost shifts.

27. AEP contends that the available hedging opportunities that MISO discusses in its answer would, in actuality, exacerbate the divergence between the day-ahead and real-time markets by increasing day-ahead congestion charges.⁴⁸ AEP states that if it used a virtual transaction in MISO’s day-ahead market, the congestion impact of the pseudo-tied load would be double-represented on MISO’s transmission system because from a modeling perspective, the congestion impact of Minden’s load is already reflected in the day-ahead market via MISO’s assumptions for uncompensated parallel flows and SPP’s firm flow entitlements on market-to-market flowgates. AEP claims that, if it used virtual transactions, the Minden load would be subject to other charges by MISO and that these charges would be additional burdens to Minden’s customers.

⁴⁵ *Id.*

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 3.

⁴⁸ *Id.* at 5.

III. Discussion

A. Procedural Matters

28. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), 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. § 385.214(d) (2019), the Commission will grant the Louisiana Public Service Commission's late-filed motion to intervene given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

29. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to an answer unless otherwise ordered by the decisional authority. We will accept AEP's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

30. We deny the Complaint in part, grant it in part, and establish a refund effective date of September 15, 2017, as discussed below. In addition, as explained further below, we are concurrently issuing a separate order in this proceeding and Docket No. EL19-60-000 to investigate the potential for overlapping or duplicative charges on the MISO-SPP seam and any appropriate remedy.

31. We find that AEP has not shown that MISO has violated the JOA by assessing congestion charges on the Minden load. AEP's assertion that MISO has violated the JOA stems from a sentence in the CMP, a technical attachment to the JOA. That sentence states:

Market Flows represent the impacts of internal generation [including generators pseudo-tied into the market area and excluding generators pseudo-tied out of the market area] serving internal load [including load pseudo-tied into the market area and excluding load pseudo-tied out of the market area] and tagged grandfathered transactions within the market area.⁴⁹

We agree with MISO that nothing in this sentence (or elsewhere in the JOA) states or implies that pseudo-tied loads, like Minden, should be exempt from the congestion charges otherwise applicable under the RTOs' individual tariffs. As MISO states, AEP is a network service transmission customer under the MISO Tariff, and as such, it is subject to congestion and loss charges. Under the JOA, Market Flows do not determine whether MISO or SPP may assess congestion charges on a given market participant. Rather,

⁴⁹ JOA, Attach. 1, CMP, Section 4.1.

Market Flows impact the congestion charges the RTOs assess each other. When calculating settlements for the real-time market-to-market process, the RTOs use the non-monitoring RTO's Market Flow to determine the payment to or from the monitoring RTO. Contrary to AEP's arguments, it is not in and of itself improper for both RTOs to assess congestion charges on the same pseudo-tied load. This is because the load may create congestion on both MISO and SPP's systems. We agree with MISO that the fact that two Commission-approved rate schedules, i.e., the JOA and the MISO Tariff, result in different types of congestion charges related to the Minden load does not demonstrate that MISO has violated the JOA or the MISO Tariff.

32. We also find that it is not unduly discriminatory for MISO to impose non-market-to-market congestion charges on loads pseudo-tied out of MISO into SPP (e.g., the Minden load) but not impose those charges for load physically located within SPP.⁵⁰ The Minden load is not similarly situated to load located outside of MISO's footprint, because Minden's load is physically located in MISO and, thus, AEP imposes congestion costs on the MISO transmission system when it serves this load.

33. Further, we find that AEP has not shown that we should direct MISO to allow pseudo-tied load to settle financially based on day-ahead prices. AEP argues that pseudo-tied load faces real-time congestion exposure that cannot be hedged by FTRs. However, while the FTRs may not be a perfect hedge because of the difference between day-ahead and real-time prices, we are not persuaded that the lack of a perfect hedge for the Minden load makes the underlying congestion charges and the MISO Tariff provisions related to hedging congestion unjust and unreasonable. As MISO notes, the Commission does not require public utilities and RTOs to offer special terms and conditions to accommodate pseudo-tie requests.⁵¹ Further, as MISO and Entergy point out, AEP could utilize virtual schedules to move AEP's price exposure from the real-time market to the day-ahead market, which, in combination with FTRs, could mitigate the Minden load's exposure to real-time congestion charges.

34. Although AEP asserts that its use of virtual schedules would exacerbate the day-ahead and real-time congestion divergence and would cause the congestion impact of the pseudo-tied load at Minden to be double-represented on MISO's transmission system,

⁵⁰ See *State Corp. Comm'n of Kan. v. FERC*, 876 F.3d 332, 335 (D.C. Cir. 2017) (internal citations omitted) (explaining that "a difference in [RTO] rate design can be discriminatory only if the contested design 'has different effects on similarly situated customers.'"); see also *Transmission Agency of N. Cal. v. FERC*, 628 F.3d 538, 549 (D.C. Cir. 2010); *Sacramento Mun. Util. Dist. v. FERC*, 474 F.3d 797, 802 (D.C. Cir. 2007).

⁵¹ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890-A, 121 FERC ¶ 61,297, at PP 630-631 (2007).

(continued ...)

AEP has failed to provide sufficient evidence for this assertion. While AEP believes congestion costs will increase with the use of virtual schedules, we cannot determine the extent of the congestion impact because AEP does not address the potential benefits of virtual transactions that hedge price differences between the day-ahead and real-time market. It is possible that the benefits of virtual transactions could outweigh the cost concerns raised by AEP.⁵²

35. However, with respect to AEP's argument that the Minden load has been subject to overlapping or duplicative congestion charges assessed by the RTOs, we note that MISO acknowledges that, for pseudo-tied loads, in limited circumstances, a congestion charge overlap occurs with respect to market-to-market flowgates.⁵³ SPP also admits that some congestion charge overlap may occur.⁵⁴ Based on these statements by MISO and SPP, we find that the potential for overlapping or duplicative charges for congestion by the RTOs exists. We find that to the extent loads pseudo-tied from MISO to SPP, such as the Minden load, are subject to overlapping or duplicative congestion charges by the RTOs, such charges are unjust, unreasonable, unduly discriminatory or preferential.⁵⁵ Further, we find that to the extent that the potential for such overlapping or duplicative congestion charges results from the RTOs' Tariff and/or JOA provisions, contract provisions, and/or practices, such provisions and/or practices are unjust, unreasonable, unduly discriminatory or preferential. Accordingly, we grant AEP's Complaint, in part, to the extent necessary to remedy such provisions and/or practices.

36. We do not have sufficient information to identify the provisions and/or practices that may cause overlapping or duplicative congestion charges, or the extent such charges have been assessed, based on the record before us. The issue of potential duplicative congestion charges on the MISO-SPP seam has also been raised in the complaint proceeding in Docket No. EL19-60-000, in which we are concurrently issuing an order.⁵⁶

⁵² We note that MISO has acknowledged, and the Commission has accepted, that pseudo-tied resources can use virtual transactions to hedge against real-time congestion in the day-ahead market. *See, e.g., Midcontinent Independent System Operator, Inc.*, 166 FERC ¶ 61,186 at PP 10, 43, 57 (2019).

⁵³ *See supra* P 16 (citing MISO Answer at 5, 8-9, 15, 25; Vannoy Test. at 16-17).

⁵⁴ *See supra* P 18 (citing SPP Answer at 4-5).

⁵⁵ *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").

⁵⁶ In the complaint proceeding in Docket No. EL19-60-000, the City of Prescott, Arkansas (Prescott) alleges, *inter alia*, that it faces unjust, unreasonable, and unduly discriminatory costs as a result of the congestion charges associated with its pseudo-tie (*continued ...*)

Therefore, in order to investigate the potential for overlapping or duplicative charges on the MISO-SPP seam and any appropriate remedy, we are also concurrently issuing a separate order in both the instant docket and Docket No. EL19-60-000 that directs further briefing on this issue. We believe that conducting this inquiry simultaneously in both proceedings will promote administrative efficiency. To the extent necessary, additional procedures may be ordered in either or both dockets.

37. In cases where, as here, the Commission institutes an investigation on a 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 on which the 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,⁵⁷ we will set the refund effective date at the earliest date possible, i.e., September 15, 2017.

38. Section 206(b) of the FPA also requires that if no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of the section 206 proceeding, the Commission shall state the reason why it has failed to render such a decision and state its best estimate as to when it reasonably expects to make such a decision. Based on our review of the record, we expect that the Commission should be able to render a decision within 12 months of the commencement of the briefing.

The Commission orders:

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

(B) The refund effective date established pursuant to section 206(b) of the FPA is September 15, 2017, as discussed in the body of this order.

(C) 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 the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations

arrangements. Prescott claims that it is assessed duplicative market-to-market congestion charges for the same pseudo-tie by both MISO and SPP. Prescott Complaint, Docket No. EL19-60-000 at 13-14, 18.

⁵⁷ 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).

under the FPA (18 C.F.R. Chapter I), further procedures will be held concerning the potential for overlapping or duplicative congestion charges that result from MISO's and SPP's Tariff and/or JOA provisions, contract provisions, and/or practices, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.