

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Neil Chatterjee,
and Richard Glick.

Midwest Independent Transmission
System Operator, Inc.

Docket No. ER10-1791-004

ORDER ON REHEARING AND CLARIFICATION

(Issued September 20, 2018)

1. In a July 13, 2016 order,¹ the Commission responded to a remand by the United States Court of Appeals for the Seventh Circuit (Seventh Circuit) to determine, in light of current conditions, what if any limitation on export pricing to PJM Interconnection, L.L.C. (PJM) for Multi-Value Projects (MVPs) by Midwest Independent Transmission System Operator, Inc. (MISO)² is justified.³ In the Order on Remand, the Commission determined that, in light of current conditions, the limitation on export pricing to PJM for MVPs by MISO is no longer justified. In addition, the Commission directed MISO to submit a compliance filing consistent with that determination.⁴ Requests for rehearing or

¹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 156 FERC ¶ 61,034 (2016) (Order on Remand).

² Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order), *order on reh’g and compliance*, 137 FERC ¶ 61,074 (2011) (MVP Rehearing Order) (collectively, the MVP Orders), *aff’d in part, dismissed in part and remanded in part sub nom. Illinois Commerce Commission v. FERC*, 721 F.3d 764, 780 (7th Cir. 2013) (*Illinois Commerce Commission II*), *cert. denied sub nom. Schuette v. FERC*, 571 U.S. 1196 (2014) and *cert. denied sub nom. Hoosier Rural Energy Co-op., Inc. v. FERC*, 571 U.S. 11967 (2014).

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,235 (2016) (order accepting compliance filing).

clarification of the Order on Remand were filed by: PJM; Indicated PJM Transmission Owners (Indicated PJM TOs);⁵ and American Municipal Power, Inc. (AMP).

2. In this order, we deny the requests for rehearing and grant in part the requests for clarification.

I. Background

A. Orders on RTO Choices, Rate Pancaking between MISO and PJM, and Cross-Border Facilities

3. In July 2002, the Commission permitted AEP, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, and Dayton Power and Light Company (Moving Parties) to join PJM instead of joining MISO.⁶ In so doing, the Commission found that these parties' decisions to join PJM would result in an elongated and highly irregular seam between MISO and PJM that would "island" portions of MISO (e.g., Wisconsin and Michigan) from the remainder of MISO and would divide highly interconnected transmission systems across which substantial trade takes place. The Commission found that, without mitigation, the irregular seam would subject a large

⁵ For the purposes of their request for rehearing and clarification, Indicated PJM TOs consist of: American Electric Power Service Corporation (AEP), on behalf of its affiliates, Appalachian Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company, AEP Appalachian Transmission Company, AEP Indiana Michigan Transmission Company, AEP Kentucky Transmission Company, AEP Ohio Transmission Company, and AEP West Virginia Transmission Company; Dayton Power and Light Company; Exelon Corporation; FirstEnergy Service Company on behalf of American Transmission Systems, Inc. (ATSI), Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company, West Penn Power Company, Potomac Edison Company, and Monongahela Power Company (FirstEnergy); Old Dominion Electric Cooperative; Pepco Holdings, Inc., Potomac Electric Power Company, Delmarva Power & Light Company, and Atlantic City Electric Company; PPL Electric Utilities Corporation; Public Service Electric and Gas Company.

⁶ *Alliance Cos.*, 100 FERC ¶ 61,137 (2002) (RTO Realignment Order I), *order on clarification*, 102 FERC ¶ 61,214, *order on clarification*, 103 FERC ¶ 61,274 (2003) (RTO Realignment Order II).

number of transactions in the region to continued rate pancaking,⁷ impeding the goals of Order No. 2000.⁸ Specifically, the Commission was concerned about the scope and regional configuration characteristic set forth in Order No. 2000, in which a regional transmission organization (RTO) must serve a region of sufficient scope and configuration to permit it to maintain reliability, effectively perform its required functions, and support efficient and non-discriminatory power markets.⁹ Therefore, as a condition of accepting the Moving Parties' RTO choices, the Commission required parties in the region to address the problem of rate pancaking across the MISO-PJM seam and instituted a proceeding under section 206 of the Federal Power Act (FPA)¹⁰ to investigate the rates for service between the two RTOs and established trial-type hearing procedures.¹¹ Following the hearing and issuance of an initial decision,¹² the Commission found that the pancaked rates for service wheeled through or out of one RTO to serve load in the other RTO were unjust and unreasonable and directed the RTOs to eliminate them.¹³

4. The Commission ordered that the pancaked rates between MISO and PJM be replaced with a license plate rate design,¹⁴ and, consistent with its policies concerning use

⁷ Rate pancaking, or a pancaked rate, occurs when a transmission customer is charged separate access charges for each utility service territory that the customer's contract path crosses.

⁸ RTO Realignment Order II, 103 FERC ¶ 61,274 at PP 24-26 (citing the elimination of rate pancaking as one of the benefits of Order No. 2000, *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,024 (1999), *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

⁹ Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 at 31,372.

¹⁰ 16 U.S.C. § 824e (2012).

¹¹ RTO Realignment Order I, 100 FERC ¶ 61,137 at PP 50-52.

¹² *Midwest Indep. Transmission Sys. Operator, Inc.*, 102 FERC ¶ 63,049 (2003).

¹³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (July 23, 2003 Order). Herein, for ease of reference, we refer to RTO Realignment Order I, RTO Realignment Order II and the July 23, 2003 Order collectively as the Anti-Pancaking Orders.

¹⁴ Under a "license plate" rate design, a customer pays the cost of transmission facilities that are located in the same zone as the customer.

of license plate rates in RTOs, the Commission also directed MISO and PJM to work with their transmission-owning members to propose a method to allocate between the RTOs the costs of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO (cross-border facilities).¹⁵ In subsequent proceedings, the Commission accepted proposals to include in the Joint Operating Agreement (JOA) between MISO and PJM methods to allocate between the RTOs the cost of cross-border facilities built for reliability purposes¹⁶ and cross-border facilities that provide economic benefits.¹⁷ In addition, in Order No. 1000, the Commission recognized this distinctive history related to the MISO-PJM seam.¹⁸

B. Orders Applying the Prohibition of Rate Pancaking between MISO and PJM to MVPs

5. On July 15, 2010, MISO and MISO Transmission Owners¹⁹ (jointly, MISO Parties) submitted revisions to the MISO Open Access Transmission, Energy and

¹⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60 (2004) (2004 Rate Design Order) (“the Commission does require that proposals to use license plate rates clearly address how the cost of new transmission facilities will be allocated and how that methodology will impact efficient transmission expansion”), *reh’g denied*, 131 FERC ¶ 61,174, at P 22 (2010).

¹⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084 (2008).

¹⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

¹⁸ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323, at P 662 (2011), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014) (noting that MISO and PJM “developed their cross-border cost allocation method in response to Commission directives related to MISO and PJM’s intertwined configuration”).

¹⁹ MISO Transmission Owners include Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service Company, Central Illinois Light Co., and Illinois Power Company (Illinois Power); American Transmission Company LLC; Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc. (Duke Ohio), Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc. (Duke Kentucky); Great River Energy; Minnesota Power (and its subsidiary Superior Water, Light and Power); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail Power

Operating Reserve Markets Tariff (Tariff) to implement criteria for identifying and allocating the costs of MVPs, which are projects that “enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple [MISO] transmission zones.”²⁰

6. In the MVP Order, the Commission accepted the proposed MVP charge for export and wheel-through transactions, except for transactions that sink in PJM. With regard to transactions that sink in PJM, the Commission stated that the MISO Parties had not shown that their proposal did not constitute a resumption of rate pancaking along the MISO-PJM seam, contrary to previous Commission orders. The Commission found that, although there had been some changes since the elimination of rate pancaking between MISO and PJM, the changes were insufficient to mitigate the RTO scope and configuration concerns that led the Commission to find that pancaked rates between MISO and PJM were unjust and unreasonable.²¹ The Commission also found that the arguments that its decision to eliminate rate pancaking was incorrect were impermissible collateral attacks on prior Commission orders.²²

7. In the MVP Rehearing Order, the Commission denied rehearing, reiterating that Order No. 2000 indicates that, among the factors that will be considered when determining appropriate RTO configuration, the Commission will look at the extent to which an RTO would encompass one contiguous area, whether it would encompass a highly interconnected portion of the grid, and what the trading patterns would be in that region.²³ The Commission rejected the argument by MISO Parties that, as a result of

Company; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency.

²⁰ July 15, 2010 MVP Filing, Transmittal Letter at 2.

²¹ MVP Order, 133 FERC ¶ 61,221 at PP 423, 440 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 35). Changes cited within pleadings in the MVP proceeding, and observed by the Commission in the MVP Orders, included: (1) Illinois Power had decided to remain in MISO; (2) ATSI had obtained Commission approval to transfer from MISO to PJM; and (3) Duke Ohio and Duke Kentucky had obtained Commission approval to transfer from MISO to PJM.

²² *Id.*

²³ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 289 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29).

changes in membership of PJM and MISO, the Commission's previous concerns have been alleviated. The Commission instead found that:

[N]o party has provided substantial evidence comprehensively addressing the factors identified in Order No. 2000, nor have they otherwise supported their claim that the Commission's scope and configuration findings regarding the irregular [MISO]-PJM seam no longer are justified.^[24] While parties may be correct that the underlying regulatory priorities and state and federal requirements have changed since the Commission rendered its previous findings regarding the appropriateness of rate pancaking between [MISO] and PJM (e.g., implementation of state renewable portfolio standards), the relevant requirements of Order No. 2000 remain applicable.^[25]

8. The Commission also rejected arguments that MVP charges were distinguishable from the pancaked rates that were previously eliminated by the Commission on the basis of the types of transmission projects considered (e.g., new versus existing transmission projects), transmission planning processes employed (e.g., regional versus local project planning), or benefits generated (e.g., cross-border versus local benefits). The Commission determined that none of those arguments changed its view of the scope and configuration of MISO and PJM, nor did they suggest that the design of the proposed MVP cost allocation methodology would not involve pancaked rates between MISO and PJM. The Commission also rejected the notion that its previous orders encouraging a broader sharing of transmission costs implicitly endorsed an impermissible resumption of rate pancaking. In addition, the Commission rejected the argument that MVP charges should be viewed as being akin to charges that recover the costs associated only with administering MISO and its markets.²⁶

9. The Commission rejected challenges to its decision to exempt PJM entities from an allocation of MVP charges but not exempt loads within MISO or in other regions. The Commission found that such arguments were collateral attacks on its previous decision to eliminate rate pancaking between MISO and PJM, while not requiring that same elimination between MISO and other RTOs. However, the Commission did note that it had stated in the July 23, 2003 Order that the circumstances presented in that

²⁴ *Id.* (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 33).

²⁵ *Id.*

²⁶ *Id.* P 290.

proceeding were “unprecedented” and explained that certain transmission owners were “uniquely situated” in relation to PJM and MISO.²⁷

10. The Commission also disagreed with claims that the MVP Order conflicted with cost causation principles, endorsed free ridership by PJM members, and condoned unduly preferential treatment for PJM loads. The Commission noted that, while it had in the MVP Order rejected the proposed methodology to allocate MVP costs to transactions that sink in PJM, it did not find that any allocation of MVP costs to PJM would necessarily be unjust and unreasonable, nor did the Commission otherwise prohibit MISO from seeking to allocate MVP costs to PJM loads (e.g., through a filing under section 205 of the FPA²⁸) in a manner that does not involve an impermissible resumption of pancaked rates and is in accordance with cost causation principles.²⁹

C. Remand

11. On June 7, 2013, the Seventh Circuit granted a petition for review regarding the Commission’s determination in the MVP Order and MVP Rehearing Order that, in view of Commission precedent prohibiting rate pancaking along the seam between MISO and PJM, MISO may not allocate costs of MVPs to export transactions that sink within PJM.³⁰ In its review of the Commission’s determination, the Seventh Circuit highlighted the fact that, at the time of the Commission’s decision to prohibit rate pancaking on transactions between MISO and PJM, all of MISO’s transmission projects were local and provided only local benefits.³¹ The Seventh Circuit noted that, in contrast, MVPs are not local but rather support all users of the system, including transmission on the system that is ultimately used to deliver energy to an external load.³² The Seventh Circuit remanded the case to the Commission for further proceedings to determine, “in light of current

²⁷ *Id.* P 291 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at PP 29-30).

²⁸ 16 U.S.C. § 824d (2012).

²⁹ MVP Rehearing Order, 137 FERC ¶ 61,074 at P 292 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29).

³⁰ *Illinois Commerce Commission II*, 721 F.3d at 778-780. In the same opinion, the Seventh Circuit otherwise rejected challenges to the Commission’s MVP Order and MVP Rehearing Order.

³¹ *Id.* at 779.

³² *Id.* at 779-780 (citing *Illinois Commerce Commission v. FERC*, 576 F.3d 470, at 473-74 (7th Cir. 2009)). This earlier Seventh Circuit decision affirmed the reasonableness of license plate rates for existing facilities in PJM.

conditions,” what if any limitation on export pricing to PJM by MISO is justified as regards MVPs.³³

D. Paper Hearing

12. In response to the Seventh Circuit’s remand, on January 22, 2015, the Commission issued an order establishing a paper hearing to supplement the record in this proceeding.³⁴ The Commission provided an opportunity for parties to submit comments regarding, “in light of current conditions, what if any limitation on export pricing to PJM for MVPs by MISO is justified.”³⁵ The Commission encouraged parties to provide studies, methodologies, or other evidence to support their positions.³⁶ Initial comments in the paper hearing were due on April 22, 2015 and reply comments were due on June 22, 2015.³⁷

II. Order on Remand

13. The Commission issued the Order on Remand in response to the pleadings in the paper hearing. In the Order on Remand, the Commission found that, “in light of current conditions, the limitation on export pricing to PJM for MVPs by MISO is no longer justified.”³⁸ In the paper hearing, the Commission developed a further record in which parties advanced arguments that there has been improvement of the MISO-PJM seam since the issuance of the Anti-Pancaking Orders, and therefore that the Commission should not prohibit the assessment of MVP charges to export transactions from MISO to PJM. Based on the Commission’s review of the paper hearing record, the Commission agreed.

³³ *Id.* at 780.

³⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 150 FERC ¶ 61,026 (2015) (Paper Hearing Order).

³⁵ *Id.* P 11.

³⁶ *Id.*

³⁷ The Commission provided 45 days from the date of the order for parties to submit initial comments and 30 days thereafter for reply comments. In response to a motion for extension of time, on February 26, 2015, the Commission issued a notice granting an extension of the deadlines for initial and reply comments, respectively, to April 22, 2015 and June 22, 2015, respectively.

³⁸ Order on Remand, 156 FERC ¶ 61,034 at P 50.

14. First, the Commission found that changes in the membership between MISO and PJM in recent years have addressed much of the irregularity that underpinned the Commission's concerns about the MISO-PJM seam in 2003. The Commission noted that, while parts of Wisconsin and Michigan remain islanded, the realignment of ATSI in 2011 and Duke Ohio and Duke Kentucky (together, Duke) in 2012 had significantly reduced the geographic complexity of the seam between the RTOs. Thus, the Commission recognized that changes in the seam had improved the situation in certain areas, as observed by the Seventh Circuit (e.g., the smoothing of the seam's diagonal).³⁹

15. Further, the Commission found that the Market-to-Market coordination between MISO and PJM had significantly improved since 2003, which helped address the inefficiencies and other issues arising along the MISO-PJM seam, including remaining issues resulting from the continued islanding of parts of Michigan and Wisconsin. The Commission explained that Market-to-Market coordination is important to resolve those issues because it allows both RTOs to jointly re-dispatch units at lower cost within the PJM and MISO regions.⁴⁰

16. In addition, the Commission took note of the Seventh Circuit's observation that, at the time of the July 23, 2003 Order, which prohibited tolls on transmission service between MISO and PJM, all of MISO's transmission projects were local and provided only local benefits, whereas MVPs are not local; they support all users of the system, including transmission on the system that is ultimately used to deliver energy to an external load, and "benefit all users of the integrated transmission system, regardless of whether the ultimate point of delivery is to an internal or external load."⁴¹ In this regard, the Commission, citing evidence in the paper hearing, noted the following: (1) the development of large scale wind generation⁴² capable of serving both MISO's and its neighbors' energy policy requirements in the western areas of MISO; (2) the reported

³⁹ *Id.* P 53.

⁴⁰ *Id.* P 54. *See also* MISO Rate Schedule 5, MISO-PJM Joint Operating Agreement, Attachment 3, Interregional Coordination Process (34.0.0) at § 1 (Overview of the Market-to-Market Coordination Process).

⁴¹ *Id.* P 55 (citing *Illinois Commerce Commission II*, 721 F.3d at 778-780 (quoting MVP Order, 133 FERC ¶ 61,221 at P 439)).

⁴² *Id.* n.98 (noting that MISO estimates that its MVP portfolio enables 43 million MWh of wind energy to meet renewable energy mandates and goals through 2028 (citing MISO Parties Initial Comments, Affidavit of Mr. Moser at P 13)).

need of PJM entities to access those resources;⁴³ and (3) the reported need for MISO to build new transmission facilities to deliver the output of those resources within MISO for export.⁴⁴

17. The Commission also rejected the argument that allowing MISO to assess the MVP Usage Rate charge on exports to PJM violates Order No. 1000 Cost Allocation Principle 4, because: (1) MISO is not involuntarily allocating the costs of MVPs to any entity outside the MISO region; and (2) the MVP Usage Rate charge is assessed only on a transmission customer who voluntarily takes transmission service in MISO under the MISO Tariff for use of MISO's transmission facilities. The Commission noted that, if an entity does not take transmission service under the MISO Tariff and, for example, takes transmission service only under the PJM Tariff, MISO will not assess that entity an MVP Usage Rate charge.⁴⁵

18. The Commission also noted that, while a goal of its Anti-Pancaking Orders was to reduce potential impacts of pancaked rates on economic dispatch, MVPs are planned, in part, to enable more efficient dispatch.⁴⁶ Additionally, the Commission noted that MISO provided evidence showing that the MVP Usage Rate is expected to be small relative to the average interface prices of MISO and PJM for both day-ahead and real-time transactions.⁴⁷

III. Requests for Clarification and/or Rehearing of the Order on Remand

19. On August 12, 2016, AMP filed a request for rehearing. First, AMP asserts that the Commission did not provide a satisfactory explanation of why the evidence and

⁴³ *Id.* n.99 (noting that there are currently 10 states within the PJM footprint that have Renewable Portfolio Standards or other mandatory or quasi-mandatory targets (citing MISO Parties Initial Comments, Affidavit of Mr. Moser at P 13)).

⁴⁴ *Id.* n.100 (citing Affidavit of Mr. Moser at P 11).

⁴⁵ *Id.* P 56.

⁴⁶ *Id.* P 57 (citing MISO Parties Initial Comments, Affidavit of Mr. Moser at P 10 (the MVP portfolio includes projects that “enhance the reliability of the regional transmission system, support public policy goals, such as state-mandated R[enewable] P[ortfolio] S[tandards], and enable the more efficient dispatch of market resources”)).

⁴⁷ The Commission also rejected Indicated PJM TOs' argument that it was improper for MISO to make the MVP Filing under section 205 of the FPA, rather than section 206, as beyond the scope of the Seventh Circuit's remand and the Paper Hearing Order. *Id.* P 58.

arguments it found unpersuasive in 2011 now produce a different result, or what developments or changes in circumstances since 2011 require a different outcome than was reached in the MVP Rehearing Order. AMP argues that “the Commission should not have considered itself bound by the factual findings in the [Seventh] Circuit’s opinion, but instead should have made its own findings, based on the evidence, about whether MVPs are ‘local’ or otherwise.”⁴⁸

20. Second, AMP disputes that repackaging will affect only voluntary transactions. AMP states that, as a consequence of the decisions by FirstEnergy and Duke to join PJM, it is compelled to use substantial amounts of MISO transmission service to deliver energy to its members from AMP resources that were left behind in MISO.

21. Third, AMP argues that the Commission in the Order on Remand failed to address the cost burden that its determination will impose on AMP.

22. Fourth, AMP argues the Commission failed to recognize the inequitable and unduly discriminatory effects of repackaging on AMP. AMP states that, had FirstEnergy and Duke remained transmission owners in MISO, AMP would have been required to pay a share of MVP costs, but AMP contends that those costs would not have been pancaked atop PJM transmission charges because most of AMP’s load also would have remained in MISO.

23. On August 12, 2016, Indicated PJM TOs filed a request for rehearing and clarification. First, Indicated PJM TOs argue that the Commission unlawfully disregarded its longstanding prohibition against rate pancaking in the combined PJM-MISO region.⁴⁹ Indicated PJM TOs next assert that MISO’s argument supporting the MVP Usage Rate’s application to transactions sinking in PJM is inconsistent with the purpose of the rate pancaking prohibition, because MISO’s assertion that the rate pancaking prohibition applies only to existing transmission facilities, and not new transmission facilities, reads this prohibition and the Commission’s orders establishing this prohibition too narrowly. Moreover, Indicated PJM TOs argue that MISO can point to no language in any Commission order suggesting that rate pancaking on transactions sinking in the combined region is permitted as long as the through-and-out charge is based on the costs of new transmission facilities.⁵⁰

⁴⁸ AMP Request for Rehearing at 8 (citing Order on Remand, 156 FERC ¶ 61,034 at P 10).

⁴⁹ Indicated PJM TOs Request for Rehearing at 6-7.

⁵⁰ *Id.* at 7.

24. Indicated PJM TOs argue that it would make no economic sense for the Commission to prohibit rate pancaking for the costs of existing facilities, but allow rate pancaking for the costs of new facilities. They also assert that Schedule 26 of the MISO Tariff disproves MISO's argument that the rate pancaking prohibition applies only to existing transmission facilities, noting that Schedule 26 also assesses a through-and-out charge based on Network Upgrades – which include new transmission projects – but expressly provides that this charge is subject to the rate pancaking prohibition in the 2004 Rate Design Order and, therefore, does not apply to transactions sinking in PJM.⁵¹ Indicated PJM TOs also argue that the MVP Usage Rate charge was developed wholly outside the coordinated and cooperative processes under the JOA between PJM and MISO for the joint and coordinated planning and cost allocation of cross-border facilities.⁵²

25. Second, Indicated PJM TOs argue that, even if the Commission finds that current conditions have changed since 2003, there is nothing in the Seventh Circuit's decision that discusses MISO's legal authority to make unilateral section 205 filings to revise the rate designed for the combined PJM-MISO region or the Commission's legal authority to modify the rate pancaking prohibition in a section 205 proceeding filed unilaterally by MISO and its transmission owners.⁵³ Rather, they contend that modification of the PJM-MISO rate design and the rate pancaking prohibition can be done only in a proceeding under section 206 of the FPA, in which the party seeking to change the rate pancaking prohibition would bear the burden of proving that the prohibition has become unjust and unreasonable. Indicated PJM TOs assert that the Commission made clear in a 2008 order that it established an "inter-RTO" rate design for the combined PJM-MISO region, as well as "intra-RTO" rate designs for the MISO region and the PJM region.⁵⁴ Furthermore, Indicated PJM TOs state, MISO has the legal authority only to unilaterally modify its intra-RTO rate design for the MISO region, not the inter-RTO rate design for the combined region, and that rate pancaking is part of the inter-RTO rate design. Indicated PJM TOs argue that MISO is a sub-region of a larger PJM-MISO combined region and that the Commission has made clear that a sub-region that is part of a larger

⁵¹ Indicated PJM TOs Request for Rehearing at 8.

⁵² *Id.* at 9.

⁵³ *Id.* at 11-12.

⁵⁴ *Id.* at 12-13 (citing *American Electric Power Service Corporation v. Midwest Independent Transmission System Operator, Inc., L.L.C.*, 122 FERC ¶ 61,083, PP 6-24 (2008 AEP Complaint Order); *reh'g denied*, 125 FERC ¶ 61,341 (2008)).

region is not authorized to modify the rate design of the larger region through a unilateral section 205 filing.⁵⁵

26. Third, Indicated PJM TOs request that the Commission clarify, or grant rehearing of, its determination in the Order on Remand that the proposed MVP Usage Rate charge on transactions sinking in PJM would only be imposed for “voluntary” use of the MISO transmission system. Indicated PJM TOs interpret the Commission’s statement that the MVP Usage Rate applies only to a customer “who voluntarily takes transmission service in MISO under the MISO Tariff” means a customer who schedules transmission service under the MISO Tariff,⁵⁶ but assert that there are several circumstances in which entities in PJM may receive power from the MISO region but not through scheduled transmission service under the MISO Tariff (e.g., under the Market-to-Market process and in emergency supply transactions). Indicated PJM TOs ask that the Commission confirm that the MVP Usage Rate does not apply when power from MISO is dispatched to the PJM region but no customer schedules transmission service under the MISO Tariff.⁵⁷

27. Fourth, Indicated PJM TOs argue that the Commission does not explain how the imposition of the proposed MVP Usage Rate charge affects or is affected by the allocation of the costs of cross-border or interregional facilities under the JOA. They request that the Commission grant clarification or, in the alternative, rehearing, and confirm that it will not permit any costs of transmission facilities that are jointly allocated between MISO and PJM in accordance with cross border or inter-regional cost allocation methodologies under the JOA to be recovered through the MVP Usage Rate charge on transactions either sinking in PJM or transmitted through PJM.⁵⁸

28. On August 12, 2016, PJM filed a motion for clarification or, in the alternative, request for rehearing. PJM requests that the Commission clarify that the JOA Interregional Planning Process is the appropriate forum for consideration of MVPs whose costs are to be allocated to PJM.⁵⁹ PJM argues that, when MISO filed Tariff revisions in 2010 to include a new category of transmission projects, i.e., MVPs, and a corresponding

⁵⁵ *Id.* at 13-14 (citing *PJM Interconnection, L.L.C.*, 108 FERC ¶ 61,318, P 70 (2004) (2004 PJM Order); *PJM Interconnection, L.L.C.*, 110 FERC ¶ 61,234, P 16 (2005) (2005 PJM Order)).

⁵⁶ *Id.* at 15 (citing Order on Remand, 156 FERC ¶ 61,034 at P 56).

⁵⁷ *Id.* at 15-16.

⁵⁸ *Id.* at 16-18.

⁵⁹ PJM Request for Clarification or Rehearing at 2-6.

cost allocation methodology for such projects, the role of MVPs in relation to interregional planning was unclear.

29. PJM argues that the Commission has subsequently made the direct link between MVPs and the interregional planning process under the JOA. PJM notes that, in an April 5, 2016 Order on Rehearing and Order No. 1000 Interregional Compliance, the Commission directed that the JOA interregional planning process must provide for consideration of MISO's MVPs that affect PJM and whether an MVP could be displaced by an interregional reliability, market efficiency, or public policy project.⁶⁰ PJM states that, although the Order on Remand sanctions allocations of MVP costs to entities scheduling exports to PJM, load in PJM will pay those costs regardless, either through locational marginal prices (LMPs) for MISO generation that clears in the PJM energy market as a MISO usage rate charge or through PJM transmission rates under Schedule 12 of the PJM Tariff in the event an MVP is allocated through the JOA. In addition, PJM argues that the impact of the Commission's approval of MISO's cost allocation could potentially change the "load payments" calculation used in the market efficiency benefits threshold and therefore may not reveal the benefits of interregional projects to substitute for the proposed MVP. PJM asserts that the Order on Remand essentially permits MISO to bypass the JOA process if it cannot garner consensus between the RTOs on an interregional project through the JOA and unilaterally file the MVP and still, in the end, allocate the costs to PJM load. As a result, PJM argues, the new unilateral cost allocation sanctioned in the Order on Remand can lead to sub-optimal results and an "end run" around the carefully crafted interregional process and its resulting cost allocation thresholds. PJM states that it asked the Commission to reconcile the Commission's directives found in the April 5, 2016 Order with the Commission's directives over the years to utilize the JOA to minimize seam issues between the two regions but that the Order on Remand did not discuss this issue.

30. For these reasons, PJM requests the opportunity to vet through the JOA process the need for an MVP and its resulting costs (including consideration of alternatives), which may include an MVP Usage Rate charge for export transactions into PJM. PJM states that such clarification would avoid forcing PJM load or generation to intervene in MISO's regional planning process. According to PJM, it would also prevent confusion as to the appropriate role of the JOA process in reviewing MVPs once they are raised in the MISO planning process. PJM argues that the JOA process should be used to provide input into the MISO planning process as to whether the project is truly needed in order to ensure effective economic deliveries into PJM. It also argues that to the extent the MVP satisfies the beneficiary screens set forth in the JOA, the costs to be allocated to the PJM

⁶⁰ *Id.* at 2-3 (citing *PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,008, at PP 18, 52, 53 (2016) (April 5, 2016 Order).

region would be clearly identified. PJM requests that the Commission direct MISO to work with PJM to address these issues.⁶¹

31. Additionally, PJM requests that the Commission reconcile how the costs assigned to exports under the Order on Remand square with the cost allocation formulas set forth in the JOA so as to prevent double-counting.⁶² In support of its request, PJM notes that, in ruling on MISO and PJM's cost allocation proposal for interregional transmission projects, the Commission directed MISO to clarify that interregional transmission projects may include MVPs. By contrast, argues PJM, MISO's Schedule 26-A socializes the costs of the MVPs to all users of MVPs, even when a particular transmission customer has simply scheduled point to point service (whether firm or non-firm) without specifically identifying a path that involves an MVP. PJM argues that it is unclear how the annual revenues received from the proceeds of a system-wide MVP Usage Rate charge will be assigned to particular MVP users. PJM further argues that it is unclear how the relevant portion of the MVP Usage Rate (the MVP Usage Rate charges) proceeds, which should be used to offset the cost allocation resulting from the JOA process, will be identified and credited to PJM customers.⁶³

IV. Commission Determination

32. In response to the Seventh Circuit's remand, the parties' arguments, and changed circumstances, the Commission found in the Order on Remand that the limitation on export pricing to PJM for MVPs, in light of current conditions, was no longer justified. As discussed further below, we deny the requests for rehearing and grant in part the requests for clarification of the Order on Remand.

33. With regard to AMP's assertion that the Commission utilized the same evidence to justify the application of MVP charges as it did to previously reject them in this docket, the Commission reconsidered its previous determinations on this issue, including, but not limited to, findings made in previous decisions on the rate pancaking issue, in light of the Seventh Circuit's determination. In the MVP Order, the Commission centered its decision on the RTO scope and configuration of RTO choices of certain transmission owners within MISO and PJM,⁶⁴ but did not consider how the Market-to-Market process affects those issues. However, in the Order on Remand, the Commission found that the

⁶¹ *Id.* at 5-6.

⁶² *Id.* at 6-8.

⁶³ *Id.*

⁶⁴ MVP Order, 133 FERC ¶ 61,221 at P 440.

Market-to-Market process allows the RTOs to more efficiently address the inefficiencies and other issues arising along the MISO-PJM seam, which contributed to the seam's previous uniqueness, and also helps to mitigate the impact of the seam.⁶⁵ We also note that MISO and PJM have implemented many general improvements to coordination between the two RTOs since the Order on Remand as a result of the Joint and Common Market Initiative, such as developing a common interface definition (improving interface price accuracy) and implementing coordinated transaction scheduling (enhancing market efficiency of external transactions).⁶⁶

34. We also reject AMP's claims that the Commission failed to consider the cost burden that approving the application of MVP charges will impose on AMP and similar entities who depend on power supply resources stranded within MISO by the RTOs' realignments and are now compelled to use MISO transmission service.⁶⁷ The Commission considered the aggregated cost burden that the application of MVP charges will have on markets in the MVP Order, stating that "MVPs support all uses of the system, including transmission on the system that is ultimately used to deliver to an external load."⁶⁸ While the Commission initially disallowed the assessment of the MVP Usage Rate to transactions sinking in PJM, the Seventh Circuit,⁶⁹ and subsequently the Commission in the Order on Remand,⁷⁰ found that such benefits also apply to users of the MISO transmission system located in PJM. As such, AMP benefits from MVPs when it takes transmission service on the MISO system. Commensurate with cost causation principles, it is just and reasonable for MISO to assess AMP a pancaked transmission rate through the MVP Usage Rate charge for the benefits AMP receives. AMP's self-supply arrangements (i.e., when AMP's generators serve AMP's load) also require transmission

⁶⁵ Order on Remand, 156 FERC ¶ 61,034 at P 54.

⁶⁶ See *Capacity Deliverability Across the Midwest Indep. Transmission Sys. Operator, Inc./PJM Interconnection, L.L.C. Seam and Coordination Across the Midcontinent Indep. Sys. Operator, Inc./PJM Interconnection, L.L.C. Seam*, 145 FERC ¶ 61,258 (2013); *Midcontinent Indep. Sys. Operator, Inc.*, 155 FERC ¶ 61,038 (2016) (order on tariff revisions to implement coordinated transaction scheduling between the RTOs).

⁶⁷ AMP Request for Rehearing at 11-15.

⁶⁸ MVP Order, 133 FERC ¶ 61,221 at P 439.

⁶⁹ *Illinois Commerce Commission II*, 721 F.3d at 779-780 (citing MVP Order, 133 FERC 61,221 at P 439).

⁷⁰ Order on Remand, 156 FERC ¶ 61,034 at P 55.

service from the MISO system and neither render the assessment of the MVP Usage Rate charge to entities within PJM unjust and unreasonable nor diminish these benefits. Thus, the MVP Usage Rate charges are not improper and are not unduly discriminatory as applied to AMP.

35. In response to the Indicated PJM TOs' request for clarification that the MVP Usage Rate charge would only be imposed for "voluntary" use of the MISO transmission system,⁷¹ we clarify that transmission service subject to the MVP Usage Rate is taken voluntarily; the MVP Usage Rate is charged only to monthly net actual energy withdrawals, export schedules, and through schedules.⁷² As noted in the Order on Remand, "there is no involuntary assignment of costs here given that the MVP [U]sage [R]ate applies to export and wheel-through transactions (i.e., customers that are taking service from [MISO]), rather than an external entity taking no service or buying no energy from [MISO], which would not be charged under this proposal."⁷³ Indicated PJM TOs are correct that MVP Usage Rates only apply to a customer voluntarily taking transmission service under MISO's Tariff. However, whether an individual PJM member arranges for transmission service from MISO or PJM does so on its members' behalf is irrelevant,⁷⁴ because when PJM arranges for transmission service on its members' behalf during an emergency, this transmission service is also taken voluntarily as PJM members have agreed to assign this responsibility to PJM.⁷⁵

⁷¹ Indicated PJM TOs Request for Rehearing at 15-16.

⁷² MISO Tariff, Schedule 26A (Multi-Value Project Usage Rate) (32.0.0).

⁷³ MVP Order, 133 FERC ¶ 61,221 at P 439.

⁷⁴ We also note that the Market-to-Market process does not result in either PJM or MISO scheduling import or export transactions on its members behalf, contrary to Indicated PJM TOs' claim, and, thus, cannot result in an involuntary assessment of the MVP Usage Rate to an entity in PJM; rather, the Market-to-Market process coordinates flows internal to PJM and MISO to more economically manage transmission constraints that impact both markets. *See* MISO-PJM JOA, Attachment 3, (Interregional Coordination Process) (2.0.0).

⁷⁵ The JOA provides that MISO and PJM may purchase energy from one another during emergencies stemming from unforeseen circumstances such as loss of equipment or forecast errors. The JOA also provides that the total charges associated with this purchase will include a transmission charge to be calculated pursuant to the delivering party's tariff. *See* MISO-PJM JOA, Attachment 5 (Emergency Energy Transactions) (33.0.0).

36. We are also not persuaded by Indicated PJM TOs' argument that the Commission's prohibition on rate pancaking in the combined PJM-MISO region disallows the implementation of the MVP Usage Rate for exports to the PJM system. The Commission expressly considered this prohibition in the Order on Remand when finding that the assessment of the MVP Usage Rate on transactions from MISO to PJM should no longer be prohibited. Indeed, the basis of the paper hearing that informed the Commission's findings in the Order on Remand was the Seventh Circuit's directive in *Illinois Commerce Commission II* to determine, *in light of current conditions*, what if any limitation on export pricing to PJM by MISO is justified.⁷⁶

37. In addition, Indicated PJM TOs' characterization of MISO's argument, that the rate pancaking prohibition applies only to existing transmission facilities, not new transmission facilities, misrepresents arguments made by MISO.⁷⁷ MISO did not refer to *all* existing and *all* new transmission facilities; rather, it referred to the Seventh Circuit's description of an existing *category* of transmission projects covered under the MISO Tariff before the creation of MVPs, local transmission facilities, and MVPs, which are a new type of transmission project.⁷⁸ Regarding this new category, the Seventh Circuit stated that MVPs "are new projects, not yet paid for, and since they will benefit

⁷⁶ *Illinois Commerce Commission II*, 721 F.3d at 780.

⁷⁷ Indicated PJM TOs Request for Rehearing at 7. Because Indicated PJM TOs do not provide a citation to any particular MISO comments or filing, we infer that Indicated PJM TOs' argument refers to MISO's Reply Comments in the Order on Remand proceeding, Docket No. ER10-1791-003. In its Reply Comments, MISO argued that the Seventh Circuit's decision in *Illinois Commerce Commission II* recognized critical distinctions between existing, local facilities at issue in RTO Realignment Orders I and II and MVPs. MISO also argued that the Commission's directives following RTO Realignment Orders I and II also demonstrated these distinctions, stating that, "[f]or example, in its orders approving the continued use of license plate rates for existing facilities, the Commission 'require[d] the RTOs and their transmission owners to develop a proposal for allocating to the customers in each RTO the cost of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO.' Had the Commission not intended to allow future creation of new project categories and cost allocation methods, it would not have issued such a directive." See Docket No. ER10-1791-003, MISO Reply Comments at 13-14 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168, at P 60, *order on clarification*, 109 FERC ¶ 61,243 (2004)).

⁷⁸ See Docket No. ER10-1791-003, MISO Reply Comments at 13-14 (quoting *Illinois Commerce Commission II*, 721 F.3d at 778-780).

electricity users in PJM, those users should contribute to the costs.”⁷⁹ In the Order on Remand, the Commission agreed with the Seventh Circuit that MVPs are not local transmission facilities and support all uses of the system, noting MVPs’ ability to assist in meeting renewable energy portfolio standards and enable more efficient dispatch. We affirm this distinction and clarify that the Commission’s acceptance of the assessment of the MVP Usage Rate to entities in PJM did not rely on the difference between *all* existing MISO transmission facilities and *all* new MISO transmission facilities.

38. We also reject Indicated PJM TOs’ argument that the Commission lacked the legal authority in a proceeding under section 205 to modify the rate pancaking prohibition and approve MISO’s proposed MVP Usage Rate charge. As the courts have held, “[o]nce FERC reacquire(s) jurisdiction [of a case following a remand], it ha[s] the discretion to reconsider the whole of its original decision.”⁸⁰ The Seventh Circuit vacated the portion of the MVP Orders concerning the rate pancaking prohibition and remanded the issue to the Commission for further analysis.⁸¹ Thus, the Seventh Circuit’s remand required the Commission to revisit the application of the rate pancaking prohibition to MISO’s proposed MVP Usage Rate charge.

39. In any event, Indicated PJM TOs’ argument that both MISO and the Commission did not have the right to modify the rate design for the combined PJM–MISO region through a unilateral filing under section 205 of the FPA that excludes PJM and its transmission owners is misplaced. In the 2008 AEP Complaint Order, the Commission used the term “inter-RTO rate” to refer to rates that MISO and PJM each charged for transmission service through and out of each transmission system that caused rate pancaking when applied to transactions sinking in the combined MISO/PJM region that require transmission service on both RTOs’ transmission systems.⁸² The Commission directed the RTOs to eliminate the rates for through-and-out service for such transactions to eliminate such rate pancaking; however, in doing so, the Commission maintained the existing arrangement whereby MISO and PJM each maintain their own tariff for service on its own transmission system, and each RTO and its transmission owners retained their section 205 filing rights with respect to proposed modifications to rates for such service under their own tariff. In the instant proceeding, MISO and its transmission owners acted within their section 205 filing rights with respect to their proposal to apply MVP Usage

⁷⁹ *Illinois Commerce Commission II*, 721 F.3d at 779.

⁸⁰ *See, e.g., Southeastern Mich. Gas Co. v. FERC*, 133 F.3d 34, 38 (D.C. Cir. 1998) (*Southeastern*); *see also, e.g., FPL Energy Marcus Hook, L.P. v. PJM Interconnection, L.L.C.*, 123 FERC ¶ 61,289, at P 19 (2008) (citing *Southeastern*).

⁸¹ *Illinois Commerce Commission II*, 721 F.3d at 780.

⁸² *See* 2008 AEP Complaint Order, 122 FERC ¶ 61,083 at P 7.

Charges to service over the MISO transmission system under the MISO Tariff for exports to PJM. Indicated PJM TOs' reliance on the 2004 PJM Order and the 2005 PJM Order is similarly misplaced as MISO and PJM are not parties to a single tariff that prevents unilateral section 205 filings not agreed to by both parties. Therefore, MISO may file to modify its Tariff without PJM's consent, such as it did with its modifications in the MVP proceeding under FPA section 205. MISO proposed the MVP Usage Rate to recover the costs of a new category of transmission projects that benefit customers voluntarily taking service on the MISO transmission system pursuant to the MISO Tariff. A PJM customer that does not take service on the MISO system will not pay the MVP Usage Rate.

40. We also reject PJM's request to clarify that MISO must use the JOA process to review any MVP whose costs would be assessed on exports to PJM through the MVP Usage Rate. PJM's request is based on a false premise. Specifically, PJM's assertion that the Order on Remand allows MISO to unilaterally allocate the cost of MVPs to PJM even if they do not meet the JOA cross-border thresholds is incorrect. The MVP Usage Rate is assessed only to customers voluntarily taking transmission service under MISO's Tariff and does not allocate the cost of every MVP to PJM. Instead, the MVP Usage Rate is the method MISO uses to recover the cost of MVPs from customers who have voluntarily contracted for the transmission of energy over MISO's transmission system.

41. PJM's requested relief – to vet all MVPs through the JOA process – and underlying assertions ignore key attributes regarding MVPs. As a threshold matter, the MVP Usage Rate applies to all MVPs, whether or not they separately qualify as an interregional transmission project under the JOA. However, to date, no MVP has qualified as an interregional transmission project under the JOA. Thus, the existing MVPs have been selected only in MISO's regional transmission plan and do not need to satisfy the thresholds established in the JOA because they are not interregional transmission projects. In contrast, to qualify as an interregional transmission project, a potential MVP would have to meet the thresholds in the JOA and be selected in both MISO's and PJM's regional transmission planning process for purposes of cost allocation as an interregional transmission project.⁸³ Regarding those MVPs that qualify as interregional transmission projects under the JOA, PJM does not demonstrate how the process by which an interregional transmission project displaces an MVP conflicts with MISO's assessment of the MVP Usage Rate. Finally, PJM offers no connection between the assessment of the MVP Usage Rate and its statements that MVPs are included in the interregional transmission planning process under the JOA and that MVPs could be displaced by three types of interregional transmission projects.

42. We grant PJM's request for clarification regarding potential double recovery of the cost of certain MVPs. If an MVP is selected in both MISO's and PJM's regional

⁸³ PJM, Interregional Agreements, MISO-JOA, art. IX, § 9.4.4.1 (Criteria for Project Designation as an Interregional Project) (9.0.0).

transmission plans for purposes of cost allocation as an interregional transmission project, the JOA provides that some of the cost of that MVP may be allocated to MISO and some of the cost of that MVP may be allocated to PJM. In this circumstance, we clarify that only the portion of an MVP's cost that is allocated to MISO may be recovered in the MISO MVP Usage Rate, and the portion of an MVP's cost that is allocated under the JOA to PJM may not be included in the MISO MVP Usage Rate.⁸⁴

The Commission orders:

The requests for rehearing are hereby denied, and requests for clarification are granted in part, as discussed in the body of this order.

By the Commission. Chairman McIntyre is not participating.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

⁸⁴ We note that MISO has not filed a mechanism to recover from PJM or any PJM entities their share of the cost of an MVP that qualifies as a interregional transmission project per the JOA and is selected in both MISO's and PJM's regional transmission plans for purposes of cost allocation as an interregional transmission project. Thus, there is currently no potential for double recovery of such costs. If and when there is an MVP that is an interregional transmission project under the JOA and MISO files a mechanism to recover the share of the costs of such a project that is allocated to PJM under the interregional cost allocation method in the JOA, MISO must ensure that there is no double recovery of costs for that MVP.