



ORDER ON COMPLAINTS, ESTABLISHING HEARING AND SETTLEMENT  
JUDGE PROCEDURES, ESTABLISHING REFUND EFFECTIVE DATES, AND  
CONSOLIDATING PROCEEDINGS

(Issued May 16, 2019)

1. On December 21, 2016 and on January 6, 2017, respectively, the Northern Illinois Municipal Power Agency (NIMPA) and American Municipal Power, Inc. (AMP) (together, Complainants) each filed a complaint against PJM Interconnection, L.L.C. (PJM) pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA)<sup>1</sup>, and Rules 206 and 212 of the Commission's Rules of Practice and Procedure (Complaints).<sup>2</sup> NIMPA and AMP allege that, since their pseudo-tie arrangement with PJM became effective on June 1, 2016, PJM has deviated from provisions of its Open Access Transmission Tariff (PJM Tariff) by imposing charges that assess congestion costs starting at the nodal point of their facilities within the Midcontinent Independent System Operator, Inc. (MISO)<sup>3</sup> region, rather than at the boundary of the PJM border. Complainants assert that this method of calculating such charges is unjust, unreasonable, and unduly discriminatory because it results in duplicative costs associated with overlapping transmission service from MISO into PJM. Complainants also move to consolidate the instant Complaints with similar complaints that are pending against MISO concerning duplicative congestion costs charged to MISO generators that pseudo-tie into PJM.<sup>4</sup>
2. As discussed below, we grant the Complaints in part, deny them in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of December 21, 2016 for the proceeding in Docket No. EL17-31-000 and January 6, 2017 for the proceeding in Docket No. EL17-37-000. We also consolidate the instant proceedings with the complaint proceedings in Docket

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, 825h (2012).

<sup>2</sup> 18 C.F.R. §§ 385.206, 385.212 (2018).

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

<sup>4</sup> Complaint and Motion for Consolidation of AMP, Docket No. EL17-29-000 (filed Dec. 19, 2016) (AMP-MISO Complaint); Complaint of Tilton Energy LLC (Tilton), Docket No. EL16-108-000 (filed Aug. 25, 2016) (Tilton Complaint).

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Nos. EL16-108-000, EL17-29-000, and EL17-54-000 for purposes of settlement, hearing, and decision.

## **I. Background**

3. In 2014, the Commission approved the request of PJM to amend the PJM Tariff to recognize limits on the amount of capacity from external resources that PJM can reliably import into the PJM region (Capacity Import Limit), and to exempt pseudo-tied resources<sup>5</sup> from the Capacity Import Limit if they meet certain requirements.<sup>6</sup> Given these changes to the PJM Tariff, the amount of capacity pseudo-tied from MISO to PJM substantially increased between PJM's 2015-2016 planning year and its 2016-2017 planning year.<sup>7</sup>

4. NIMPA states that it owns a 7.6 percent (120 MW) interest in the Prairie State Energy Campus (Prairie State), a 1600 MW mine mouth coal generating resource located in the MISO load balancing area, in Washington County, Illinois. NIMPA explains that it is a single project agency and uses all of its Prairie State entitlements to serve the capacity and energy needs of its members.<sup>8</sup> NIMPA states it has been serving its members with Prairie State output on an essentially "must-run" basis through a long-term power sales agreement.<sup>9</sup> According to NIMPA, it offered Prairie State capacity into

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<sup>5</sup> A pseudo-tied generation resource is one physically located in one Balancing Authority Area, but treated electrically as being in another Balancing Authority Area. *See, e.g., Integration of Variable Energy Resources*, Notice of Inquiry, 130 FERC ¶ 61,053, at P 32 n.23 (2010) ("Pseudo-ties are defined as telemetered readings or values that are used as 'virtual' tie line flows between balancing authorities where no physical tie line exists.").

<sup>6</sup> *See PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,060, at PP 25, 49-54 (2014).

<sup>7</sup> AMP Complaint, Exhibit AMP-3. The RTOs have stated in a Joint and Common Market (JCM) presentation that 156 MW were pseudo-tied during the 2015-2016 planning year and that the amount increased to 2,061 MW for the 2016-2017 planning year.

<sup>8</sup> NIMPA's members include the Illinois cities of Batavia, Geneva, and Rochelle, load-serving electric utilities located in the service territory of PJM.

<sup>9</sup> NIMPA Complaint at 3-4.

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PJM's Reliability Pricing Model (RPM) auctions utilizing firm transmission service through MISO into PJM beginning with auction year 2012/13.<sup>10</sup>

5. AMP develops and owns generation, or participates in generating resources developed by others, to secure long-term capacity and energy for its members at predictable prices. AMP asserts that it owns a 23.26 percent (378 MW) interest in Prairie State. AMP notes that the great majority of its members are load-serving entities within the PJM region.<sup>11</sup>

6. According to NIMPA, when a generator within one balancing authority can deliver power into another by electrically transferring output into the attaining balancing authority where it then becomes available for dispatch, this is known as a "dynamic transfer."<sup>12</sup> NIMPA explains that there are two principal types of dynamic transfers - dynamic schedules and pseudo-ties. Dynamic schedules are subject to different modeling requirements than pseudo-ties, and involve North American Electric Reliability Corporation tagging, whereas pseudo-ties do not.<sup>13</sup>

7. To ensure that their load-serving members in PJM would continue to meet their capacity obligations, Complainants established pseudo-tie arrangements to export output from their Prairie State generation resources, located in MISO, to PJM, effective June 1, 2016.<sup>14</sup> Complainants explain that as a pseudo-tied external resource, their Prairie State generation is essentially under PJM's operational control and dispatched as a PJM asset in PJM's system.<sup>15</sup>

8. NIMPA states that PJM pays NIMPA for energy at a locational marginal price (LMP) that includes congestion and losses. NIMPA asserts that it does not know the exact method by which PJM determines congestion and losses, but its understanding

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<sup>10</sup> *Id.* at 4.

<sup>11</sup> AMP Complaint at 3-4.

<sup>12</sup> NIMPA Complaint at 8.

<sup>13</sup> *Id.* (citing PJM Dynamic Transfer Business Rules for Generators, at 1 (<http://www.pjm.com/~media/committeesgroups/subcommittees/sos/20160127/20160127-item-10-pjm-whitepaper-on-dynamic-transfer-business-rules-forgenerators.ashx>)).

<sup>14</sup> NIMPA Complaint at 5; AMP Complaint at 6.

<sup>15</sup> *Id.*

(continued ...)

from PJM is that the Prairie State units are modeled as if they are an internal PJM resource with nodal representation based on their physical location in MISO.<sup>16</sup>

9. Complainants state that MISO also assesses congestion charges and losses against them using “Financial Schedules” for energy transmitted from Prairie State to the MISO-PJM interface using MISO’s Point-to-Point Transmission Service. MISO’s use of Financial Schedules for that purpose is the core of the Tilton Complaint against MISO, in support of which Complainants have filed comments in the Tilton proceeding in Docket No. EL16-108-000. AMP has filed a similar complaint against MISO in Docket No. EL17-29-000. Complainants state that a portion of the transmission congestion charge assessed by PJM for their pseudo-tied generation is duplicative of the congestion costs MISO collects using the Financial Schedules.<sup>17</sup>

## II. Complaints

10. Complainants argue that PJM’s imposition of congestion charges for pseudo-tied generation using MISO’s nodal congestion prices is unjust, unreasonable, and unduly discriminatory.<sup>18</sup> Complainants explain that PJM assesses congestion costs from the Prairie State node physically located in MISO, along the entire transmission path, to a reference point within PJM where the energy price is set. As a result, Complainants contend that PJM appears to be collecting congestion revenue for transmission service provided by MISO on the MISO transmission system.<sup>19</sup> Complainants explain that this would be avoided if PJM assessed its congestion charges from the PJM-MISO interface.<sup>20</sup>

11. Complainants state that, however, PJM continues to use source nodal points for pseudo-tied resources, which results in duplicative charging for congestion costs. They explain that the duplicative charges occur because congestion associated with the same transmission path from the pseudo-tied generating source to the PJM border overlaps with congestion charges that are imposed by MISO as part of its point to point delivery to

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<sup>16</sup> NIMPA Complaint at 6-7.

<sup>17</sup> *Id.* at 6; AMP Complaint at 7.

<sup>18</sup> NIMPA Complaint at 6; AMP Complaint at 10.

<sup>19</sup> NIMPA Complaint at 6; AMP Complaint at 7.

<sup>20</sup> NIMPA Complaint at 6-7; AMP Complaint at 7.

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the same border.<sup>21</sup> Because of the double counting of congestion over some flowgates,<sup>22</sup> Complainants contend that PJM's use of the source point instead of the interface pricing point for calculating congestion costs associated with its pseudo-tied resources is unjust and unreasonable.<sup>23</sup>

12. Complainants further argue that PJM's use of the source point violates the PJM Tariff and the MISO-PJM Joint Operating Agreement (JOA), which requires that PJM settle congestion charges for imports using the differential between congestion pricing at an interface pricing point on the PJM-MISO border and the delivery point on the PJM transmission system.<sup>24</sup> Complainants state that Attachment K-Appendix of the PJM Tariff details how transmission congestion charges should be calculated. Specifically, Section 5.1.4 specifies that:

Transmission Congestion Charges shall be assessed for transmission use scheduled in the Day-ahead Energy Market, calculated as the amount to be delivered multiplied by the difference between the Day-ahead Congestion Price at the delivery point or the delivery Interface Pricing Point at the boundary of the PJM Region and the Day-ahead Congestion Price at the source point or the source Interface Pricing Point at the boundary of the PJM Region.

13. Complainants argue that this provision is intended to apply to all transactions, including their pseudo-tied units, using the PJM transmission system, including exports, imports, and through and out transactions. AMP contends that PJM unilaterally calculates the price at the MISO injection point using a method for which there is no applicable tariff or business practice manual methodology.<sup>25</sup>

14. Complainants assert that PJM has an affirmative obligation to resolve the conflicts and incompatibilities caused by its pseudo-tie requirements. Complainants point to Section 1.7.6(b) of Attachment K-Appendix in the PJM Tariff, which provides that the

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<sup>21</sup> NIMPA Complaint at 10; AMP Complaint at 7.

<sup>22</sup> Attachment 2, section 1 of the JOA defines a "flowgate" as "a representative modeling of facilities or groups of facilities that may act as significant constraint points on the regional system."

<sup>23</sup> NIMPA Complaint at 10; AMP Complaint at 13.

<sup>24</sup> NIMPA Complaint at 10; AMP Complaint at 14.

<sup>25</sup> AMP Complaint at 15.

(continued ...)

“Office of Interconnection shall undertake to identify any conflict or incompatibility between the scheduling or other deadlines or specifications applicable to the PJM Interchange Energy market, and any relevant procedures of another Control Area.... [and] propose tariff or procedural changes, and undertake such other efforts as may be appropriate, to resolve any such conflict or incompatibility.”<sup>26</sup> AMP contends that the duplicative charges must be considered an incompatibility within the meaning of this provision of the PJM Tariff.<sup>27</sup> Thus, Complainants argue that PJM’s failure of its obligation to make appropriate adjustments to the PJM Tariff to address this incompatibility with MISO results in a violation of the PJM Tariff.<sup>28</sup>

15. NIMPA estimates the financial impact of the duplicative charges to be approximately \$500,000. NIMPA arrives at this amount by estimating the difference in value attributable to NIMPA’s Prairie State generation before and after the implementation of the pseudo-tie as of June 1, 2016, through October, 2016.<sup>29</sup> AMP estimates that the duplicative charges total \$915,533.85. AMP estimated this amount by subtracting the congestion component of real-time and day-ahead PJM LMPs for the MISO Interface Pricing Points from PJM’s LMP for the Prairie State injection point.<sup>30</sup>

16. Complainants request that the Commission: (1) find that PJM’s practice of collecting congestion charges that are duplicative of congestion charges MISO assesses for service on the MISO transmission system is unjust, unreasonable, and unduly discriminatory; (2) find that the underlying provisions of the PJM Tariff require PJM to apply Interface Pricing Points to determine congestion charges applicable to generators pseudo-tied from MISO into PJM, and direct PJM to abide by those terms in the future; (3) order PJM to refund the improper congestion charges collected from them; (4) establish the date of June 1, 2016 as the refund effective date for their Complaints; and (5) consolidate the instant Complaints with the Tilton Complaint in Docket No. EL16-108-000 and the AMP-MISO Complaint in Docket No. EL17-29-000.<sup>31</sup>

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<sup>26</sup> NIMPA Complaint at 12; AMP Complaint at 14.

<sup>27</sup> AMP Complaint at 17.

<sup>28</sup> NIMPA Complaint at 12; AMP Complaint at 17.

<sup>29</sup> NIMPA Complaint at 6; Holm Affidavit at 4.

<sup>30</sup> AMP Complaint at 15.

<sup>31</sup> NIMPA Complaint at 15-16; AMP Complaint at 22.

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### **III. Notice of Filings and Responsive Pleadings**

#### **A. NIMPA's Complaint**

17. Notice of NIMPA's Complaint was published in the *Federal Register*, 82 Fed. Reg. 1333 (2017), with interventions and protests due on or before January 10, 2017. On January 9, 2016, PJM filed a motion to extend the period for filing comments in this proceeding. On January 18, 2017, the Commission issued a Notice of Extension of Time extending the comment deadline up to and including January 25, 2017.

18. Illinois Municipal Electric Agency; Monitoring Analytics, LLC, the Independent Market Monitor for PJM (PJM Market Monitor); Wabash Valley Power Association, Inc.; MISO; Southern Company Services, Inc.; North Carolina Electric Membership Corporation; Tatanka Wind Power, LLC; Tilton; NRG Power Marketing LLC and GenOn Energy Management, LLC; AMP; Entergy Services, Inc.;<sup>32</sup> Organization of MISO States; Exelon Corporation (Exelon); Illinois Citizens Utility Board; Direct Energy Business Marketing, LLC (Direct Energy); and Rockland Power Partners II, LP, filed timely motions to intervene. Enel Green Power North America, Inc. and Electric Power Supply Association filed motions to intervene out-of-time.

19. On January 25, 2017, PJM filed an answer. Also on January 25, 2017, AMP filed comments in support of NIMPA's Complaint, and Tilton filed a protest. On January 31, 2017, NIMPA filed a motion for leave to answer and answer to PJM's answer. On February 9, 2017, the PJM Market Monitor filed comments and a motion for leave to answer and answer to PJM's answer.<sup>33</sup> On February 23, 2017, AMP filed a motion for leave to answer and answer to the PJM Market Monitor.<sup>34</sup>

#### **B. AMP's Complaint**

20. Notice of AMP's Complaint was published in the *Federal Register*, 82 Fed. Reg. 5556 (2017), with interventions and protests due on or before February 8, 2017.

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<sup>32</sup> Entergy Services, Inc. is intervening on behalf of: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

<sup>33</sup> The PJM Market Monitor's answer was filed in Docket Nos. EL17-31-000 and EL17-37-000.

<sup>34</sup> AMP's February 23, 2017 answer was filed in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

21. Entergy Services, Inc., et al.; American Electric Power Service Corporation; Illinois Municipal Electric Agency; Exelon Corporation, DC Energy, LLC; Wabash Valley Power Association, Inc.; Tilton; NIMPA; Direct Energy Business Marketing, LLC; AMP; North Carolina Electric Membership Corporation; MISO; NRG Power Marketing LLC and GenOn Energy Management, LLC; and PJM Market Monitor, filed timely motions to intervene. Electric Power Supply Association, Enel Green Power North America, Inc., and Rockland Power Partners II, LP filed motions to intervene out-of-time.

22. On February 8, 2017, PJM filed an answer. On February 9, 2017, the PJM Market Monitor filed comments and a motion for leave to answer and answer to PJM's answer. On February 23, 2017, AMP filed a motion for leave to answer and answer to the PJM Market Monitor's answer.

### C. RTOs' Abeyance Motion and Status Reports

23. On January 25, 2017, concurrent with PJM's answer, the RTOs filed a joint motion to hold in abeyance the instant proceedings as well as the complaint proceedings in Docket Nos. EL16-108-000 and EL17-29-000 in order to develop a methodology to resolve the congestion overlap issue related to pseudo-ties. Answers opposing the abeyance motion were filed by AMP on January 27, 2017, by NIMPA on January 31, 2017,<sup>35</sup> and by Tilton on February 1, 2017. On February 8, 2017, Exelon and Direct Energy jointly filed a motion to consolidate Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 and comments supporting the abeyance motion. On February 23, 2017, AMP filed (1) an answer to Exelon and Direct Energy's joint motion to consolidate and comments and (2) a motion for leave to answer and answer to the MISO Transmission Owners' February 9, 2017 answer.<sup>36</sup>

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<sup>35</sup> NIMPA also requested that the Commission consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

<sup>36</sup> The MISO Transmission Owners' February 9, 2017 answer was filed in Docket Nos. EL16-108-000 and EL17-29-000, but not in the instant docket. The MISO Transmission Owners for those proceedings consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric (continued ...)

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

25. On May 26, 2017, the RTOs filed a second joint status update in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000, and EL17-54-000. AMP filed comments to this status update. On July 25, 2017, the RTOs filed a third joint status update. AMP filed a response to the RTOs' abeyance motion and third status update. On September 25, 2017, the RTOs filed a fourth joint status update. Tilton filed an answer to this status update. On November 22, 2017, the RTOs filed a fifth joint status update. AMP filed comments to this status update. On January 23, 2018, the RTOs filed a sixth joint status update. AMP filed comments to this status update. On April 6, 2018, the RTOs filed a seventh joint status update. NIMPA filed comments to this status update.<sup>38</sup>

26. On June 1, 2018, the MISO/PJM Complainants filed a joint request for Commission action to the status update, requesting, *inter alia*, that the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, EL17-37-000,

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Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a ITCTransmission; ITC Midwest LLC; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Missouri River Energy Services; Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company, a Minnesota corporation, and Northern States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company (d/b/a Vectren Energy Delivery of Indiana); Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc.

AMP's February 23, 2017 answer also included its answer to the PJM Market Monitor. *See supra* PP 19, 22 & n.33.

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

<sup>38</sup> In NIMPA's comments, NIMPA reiterated its request to consolidate the proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000.

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and EL17-54-000 be consolidated. On June 13, 2018, MISO filed a motion for leave to answer and answer to the MISO/PJM Complainants' joint request. On June 28, 2018, MISO/PJM Complainants filed a joint motion for leave to answer and answer to MISO's answer.

#### **D. PJM's Answers to Complaints**

27. PJM disputes the economic impact estimates presented by Complainants and argues that Complainants failed to meet their burden of proof under section 206 of the FPA, because they did not show that any existing tariff provision or practice is unjust and unreasonable.<sup>39</sup> PJM also requests that the Commission deny Complainants' request for relief because no basis exists for refunds under sections 206 or 309 of the FPA. While PJM denies the allegations in both proceedings, it admits that in stakeholder discussions it acknowledged that (1) a potential risk of double-counting congestion costs related to pseudo-tied resources, and (2) using interface pricing points to settle congestion charges for pseudo-tied generating resources, rather than nodal prices, potentially could eliminate the double counting issue.<sup>40</sup> In addition, PJM does not oppose Complainants' motions to consolidate.

#### **E. Other Pleadings**

28. AMP supports NIMPA's Complaint, stating that the resulting transmission congestion charges violate the PJM Tariff by substituting PJM's artificial nodal injection point congestion prices for the interface pricing point congestion prices applicable to imports under the PJM Tariff and PJM Operating Agreement. AMP argues that similarly situated generators, such as Complainants, are being required to pay millions of dollars in duplicative charges and the substantial monetary harm faced by MISO-area pseudo-tied generators into PJM requires prompt action on the pending Complaints.<sup>41</sup>

29. Tilton states that it does not oppose consolidating these Complaints with the Tilton Complaint against MISO in Docket No. EL16-108-000. However, Tilton disagrees with Complainants' assertion that PJM's congestion charges to pseudo-tied generating units

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<sup>39</sup> PJM Answer to NIMPA at 3; PJM Answer to AMP at 3 (both citing 16 U.S.C. § 824e(b) ("In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant.")).

<sup>40</sup> PJM Answer to NIMPA at 3-6; PJM Answer to AMP at 5-7.

<sup>41</sup> AMP Comments at 2-3.

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should be based on the interface price points at the PJM-MISO border, instead of nodal price points in the MISO footprint. Tilton contends that Complainants' suggestion that PJM should apply price points at the PJM-MISO seam is at odds with proper market design and should not be adopted.<sup>42</sup>

30. In its answer to PJM's answer, NIMPA argues that PJM offers no evidence to contradict the allegations of duplicative congestion charges.<sup>43</sup> NIMPA points out that PJM admitted that it has acknowledged, in the context of stakeholder meetings, a risk of double-counting congestion cost and that using pricing points at the MISO-PJM border could potentially eliminate the problem.<sup>44</sup>

31. The PJM Market Monitor states that the issue in these proceedings is technical in nature and concerns how the rules of two RTOs interact in defining congestion for pseudo-tied units. Thus, the PJM Market Monitor asserts that the pseudo-tie complaints should be consolidated into a single proceeding and referred to a settlement judge.<sup>45</sup> The PJM Market Monitor argues that the Complainants have not supported the claims that PJM's settlement of congestion charges for a pseudo-tied generating resource using a nodal price rather than an interface price is not just and reasonable or the claim that PJM's approach violates the PJM Tariff.<sup>46</sup>

32. In response to the PJM Market Monitor, AMP states that it would not oppose a strictly time-limited process before a Commission settlement judge under certain conditions.<sup>47</sup>

#### **IV. Related Proceedings**

##### **A. Other Pseudo-Tie Congestion Complaint Proceedings**

33. As noted above, on August 25, 2016, Tilton filed a complaint against MISO in Docket No. EL16-108-000. Tilton alleges that MISO deviated from the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) by imposing congestion and administrative charges on Tilton. Tilton also alleges that

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<sup>42</sup> Tilton Comments to NIMPA at 2-3; Tilton Comments to AMP at 2-3.

<sup>43</sup> NIMPA Answer at 4.

<sup>44</sup> *Id.* at 2.

<sup>45</sup> PJM Market Monitor Comments at 2-3.

<sup>46</sup> *Id.* at 2.

<sup>47</sup> AMP February 23, 2017 Answer at 7.

MISO's imposition of such charges on Tilton is unjust, unreasonable, and unduly discriminatory because, *inter alia*, it results in the duplicative assessment of congestion and administrative charges by MISO and PJM on pseudo-tied resources. On December 19, 2016, AMP filed a complaint against MISO in Docket No. EL17-29-000. AMP's complaint is substantively similar to Tilton's complaint.

34. On March 28, 2017, the Dynegy Companies filed a complaint against MISO in Docket No. EL17-54-000. The Dynegy Companies allege that MISO has been assessing congestion and losses charges on their resources pseudo-tied from MISO into PJM in a manner that contravenes the MISO Tariff, resulting in the unjust, unreasonable, and unduly discriminatory imposition of duplicative charges for congestion and losses on these resources.

35. In this order, we refer to the instant Complaints, and the three other complaints described above,<sup>48</sup> collectively as the MISO/PJM Pseudo-Tie Congestion Complaints.

### **B. RTOs' Phase 1 and Phase 2 Revisions**

36. As part of their efforts to address the market and reliability challenges posed by the increased number of pseudo-tied resources from MISO to PJM, the RTOs proposed a two-phase resolution of certain issues involving the overlapping congestion charges affecting pseudo-tied resources. The RTOs explained that the then-effective JOA contained provisions for coordinated congestion management over Reciprocally Coordinated Flowgates.<sup>49</sup> The RTOs explained that when a Reciprocally Coordinated Flowgate binds simultaneously in both MISO and PJM, that Reciprocally Coordinated Flowgate can create overlapping congestion charges that a pseudo-tied resource pays or is paid.<sup>50</sup> The RTOs explained that congestion overlap occurs on the pseudo-tie transaction path between the source generation resource and sink interface for congestion associated with Reciprocally Coordinated Flowgates that are coordinated under the market-to-market settlement process.

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<sup>48</sup> *See supra* PP 33-34.

<sup>49</sup> The JOA is on file as MISO Rate Schedule 5 and as a PJM Interregional Agreement. A Reciprocally Coordinated Flowgate is a Flowgate that is subject to reciprocal coordination by Operating Entities. *See* JOA § 2.2.54. A Flowgate is defined under the JOA as "a representative modeling of facilities or groups of facilities that may act as significant constraint points on the regional system." *See id.* § 2.2.24.

<sup>50</sup> The overlap could be a payment or a charge depending on the location of the constraint and the impact of the pseudo-tie.

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

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

39. On July 31, 2018, the Commission accepted the Phase 1 Revisions, effective August 1, 2018.<sup>51</sup> The Commission found that the “Phase 1 Revisions represent an improvement over current practices and will address the majority of the overlapping congestion charges affecting pseudo-tied generation in MISO and PJM.”<sup>52</sup> The Commission noted that the claims that resources had been subject to overlapping congestion charges in the MISO/PJM Pseudo-Tie Congestion Complaint proceedings were beyond the scope of the Phase 1 Revisions proceeding and that such claims would be addressed in the respective complaint proceedings.<sup>53</sup>

40. On June 1, 2018, PJM submitted its own Phase 2 Revisions, proposing to modify the PJM Tariff and the PJM Amended and Restated Operating Agreement to: (1) charge or credit pseudo-tie transactions from MISO to the PJM-MISO interface for real-time deviations from day-ahead schedules for congestion resulting from market-to-market coordination pursuant to the JOA; and (2) provide a new transaction type to hedge exposure to financial risk for pseudo-tied resources from PJM into MISO (PJM Phase 2 Revisions). On July 31, 2018, the Commission accepted PJM’s Phase 2 Revisions

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<sup>51</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 3 (2018) (Phase 1 Order).

<sup>52</sup> *Id.* P 22.

<sup>53</sup> *Id.* P 30.

(continued ...)

effective August 1, 2018, finding that they address concerns about the potential for congestion charge overlap.<sup>54</sup> Again, the Commission found that the claims about overlapping congestion charges in the complaints were beyond the scope of the Phase 2 Revisions proceeding and stated that it would address the arguments raised in the MISO/PJM Pseudo-Tie Congestion Complaints in those complaint dockets.<sup>55</sup>

41. On October 2, 2018, as amended on January 19, 2019, MISO filed its own Phase 2 Revisions to (1) address how Market Participants with pseudo-ties out of MISO can use Virtual Transactions to align Financial Transmission Rights and Transmission Usage Charges (TUCs); and (2) modify Schedule 17 (Energy Market Support Administrative Service Cost Adder) to reduce the administrative charges assessed to Market Participants with a pseudo-tie of generation or load out of MISO (MISO Phase 2 Revisions). On March 19, 2019, the Commission accepted the MISO Phase 2 Revisions, subject to condition, effective March 1, 2019.<sup>56</sup> The Commission found that the RTOs have demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion charge overlap.<sup>57</sup> The Commission stated that it would address the issue of relief for prior charges assessed by MISO, and the various arguments as to whether MISO had authority to assess TUCs—which include congestion charges—and administrative charges, in the MISO/PJM Pseudo-Tie Congestion Complaint proceedings.<sup>58</sup>

## V. Discussion

### A. Procedural Matters

42. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214(d) (2018), the Commission grants the late-filed motions to intervene of Electric Power Supply Association, Enel Green Power North America, Inc., and

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<sup>54</sup> *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073, at P 17 (2018) (PJM Phase 2 Order).

<sup>55</sup> *Id.* P 44.

<sup>56</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186 (2019) (MISO Phase 2 Order).

<sup>57</sup> *Id.* PP 59, 61.

<sup>58</sup> *Id.* PP 52, 56, 63.

Rockland Power Partners II, LP given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

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

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

## **B. Substantive Matters**

45. As discussed below, we grant the Complaints in part, deny them in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of December 21, 2016 for the proceeding in Docket No. EL17-31-000 and January 6, 2017 for the proceeding in Docket No. EL17-37-000. We also consolidate the instant proceedings with the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, and EL17-54-000 for purposes of settlement, hearing, and decision.

### **1. Tariff Authorization to Assess Congestion Charges from the Source Point**

46. We find that PJM's calculation of congestion charges from the nodal point within MISO for pseudo-tied resources does not violate the PJM Tariff. We further find that the PJM Tariff authorizes PJM to use the source point or define the source Interface Pricing Point in a manner consistent with its current practice. Specifically, we find that Complainants' reliance on Section 5.1.4 of Attachment K-Appendix is misplaced. Section 5.1.4 of Attachment K-Appendix dictates that the transmission congestion charge will take into account the difference between the congestion price at the "delivery point...and the source point or source Interface Pricing Point at the boundary of the PJM Region." Contrary to Complainants' assertion, we find that the PJM Tariff indicates that both the source point, wherever it may be, and the Interface Pricing Point are permissible points for PJM to begin calculating congestion charges.

47. Further, even if only the Interface Pricing Point were acceptable, the PJM Tariff gives PJM latitude to define that point as appropriate. To define the Interface Pricing Point, the PJM Tariff refers to Attachment K-Appendix section 2.6A, and the parallel provision in schedule 1, Section 2.6A of the Operating Agreement, which state that

PJM shall from time to time, as appropriate, define and revise Interface Pricing Points for purposes of calculating LMPs for energy exports to or

energy imports from external balancing authority areas. Such Interface Pricing Points may represent external balancing authority areas, aggregates of external balancing authority areas, or portions of any external balancing authority area.<sup>59</sup>

48. Thus, PJM may determine the Interface Pricing Point by choosing a portion of an external balancing authority area such as MISO. Here, the PJM Tariff permits PJM to define the Interface Pricing Point as the nodal point in MISO where the Complainants' generation facility is located. In addition, we note that a balancing authority area is determined by a set of nodes external to the PJM system.<sup>60</sup> The nodal prices of these nodes are aggregated to calculate the interface price point. Therefore, PJM's current practice of calculating congestion costs based on the source point at Prairie State is not inconsistent with the PJM Tariff requirement that PJM apply Interface Pricing Points to determine congestion charges applicable to generators pseudo-tied from MISO into PJM.

49. We find that the language of the JOA indicates that the dispatch of resources in both markets will be performed under a nodal pricing regime. Specifically, section 11.2.1 of the JOA (LMP Calculation Consistency) provides that "the Parties agree to ensure that LMP signals meet certain common criteria in order to achieve maximum benefits to competition from the Joint and Common Market. In particular, the Parties agree that dispatch in both markets will be performed under a nodal pricing regime and that settlement will be based, in part, on the resulting LMPs." The Complainants present no arguments controverting the provision for nodal pricing in the JOA.

## **2. PJM's Obligation to Resolve Incompatibilities**

50. We also find that consistent with Section 1.7.6(b) of the PJM Tariff, PJM has worked with MISO to resolve the incompatibilities with the MISO Tariff that may exist with regard to pseudo-tied resources. Specifically, we note that the RTOs had begun working with stakeholders to address the congestion overlap issue before the filing of the MISO/PJM Pseudo-Tie Congestion Complaints.<sup>61</sup> Further, the RTOs have filed the Phase 1 Revisions and PJM filed its Phase 2 Revisions to address the issue and the Commission has accepted them.<sup>62</sup>

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<sup>59</sup> PJM Tariff, Attachment K-Appendix Section 2.6A (emphasis added).

<sup>60</sup> Schedule 1, section 2.6A(a) of the PJM Operating Agreement (Interface Prices).

<sup>61</sup> PJM Answer at 2.

<sup>62</sup> *See supra* PP 36-40.

(continued ...)

**3. Whether PJM's Assessment of Congestion and Administrative Charges is Unjust, Unreasonable, Unduly Discriminatory or Preferential**

51. The Complainants argue that they have been subject to overlapping congestion charges assessed by the RTOs. As discussed above, the Commission has accepted the RTOs' Phase 1 and Phase 2 filings to address prospective concerns regarding such charges. Further, the MISO Phase 2 Order found that the RTOs demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion overlap.<sup>63</sup> Thus, we find that the JOA and other sections of the PJM Tariff as currently on file are just and reasonable, and we will not require PJM to make further revisions to the PJM Tariff.

52. However, with respect to Complainants' argument that they have been subject to overlapping congestion charges assessed by the RTOs prior to the acceptance of the Phase 1 and Phase 2 Revisions, based on the record before us and the statements by the RTOs in making their Phase 1 and Phase 2 Revisions,<sup>64</sup> we find that the potential for overlapping or duplicative charges for congestion existed prior to the effective dates of the revisions made by the Phase 1 and Phase 2 filings. The RTOs have stated, and no party disputes, that there was a potential for such overlapping or duplicative congestion charges in certain circumstances, specifically, when both markets bound on the same Reciprocally Coordinated Flowgate under the market-to-market process.<sup>65</sup> We therefore grant the Complaints, in part, finding that to the extent the Complainants were assessed

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<sup>63</sup> MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61.

<sup>64</sup> *See, e.g.*, RTOs January 25, 2017 Joint Motion to Hold Proceedings in Abeyance at 2-3; RTOs March 27, 2017 Status Update at 1-3; Phase 1 Order, 164 FERC ¶ 61,069 at PP 3-5, 8; PJM Phase 2 Order, 164 FERC ¶ 61,073 at PP 7-8; MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 30-31 (citations omitted).

<sup>65</sup> As discussed above, prior to the acceptance of the Phase 1 and Phase 2 Revisions, when both markets bound on the same Reciprocally Coordinated Flowgate under the market-to-market process, the Native Balancing Authority assessed the pseudo-tied resource a transmission usage charge for the energy transactions between the pseudo-tied resource and the interface with the Attaining Balancing Authority. At the same time, the Attaining Balancing Authority also assessed the pseudo-tied resource a charge for the energy transactions between the pseudo-tied resource and the delivery point within the Attaining Balancing Authority. In this instance, both the Native Balancing Authority and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface. *See supra* P 37; *see also* Phase 1 Order, 164 FERC ¶ 61,069 at P 4.

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overlapping or duplicative congestion charges by the RTOs, such charges were unjust and unreasonable.<sup>66</sup>

53. We find that determining what refunds are appropriate to Complainants to remedy the overlapping or duplicative congestion charges raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Because of the existence of common issues of law and fact regarding the extent to which the MISO/PJM Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds, we grant the motions to consolidate and consolidate the instant Complaint proceedings with the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, and EL17-54-000 for purposes of settlement, hearing, and decision. We believe that consolidating these proceedings will promote administrative efficiency.

54. While we are setting these matters for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures are commenced. To aid the parties in their settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.<sup>67</sup> If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.<sup>68</sup> The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

55. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a

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<sup>66</sup> 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").

<sup>67</sup> 18 C.F.R. § 385.603.

<sup>68</sup> If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

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refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month refund period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,<sup>69</sup> we will set the refund effective date at the earliest date possible, i.e., December 21, 2016 for the proceeding in Docket No. EL17-31-000, and January 6, 2017 for the proceeding in Docket No. EL17-37-000.

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

The Commission orders:

(A) NIMPA and AMP's Complaints are hereby granted, in part, and denied, in part, as discussed in the body of this order.

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

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

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act and by the FPA, particularly section 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the FPA (18 C.F.R. Chapter I), a public hearing shall be held concerning the Complaints. However, the hearing shall be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

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<sup>69</sup> 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).

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2018), the Chief Administrative Law Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the parties decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

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

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

(H) The refund effective date established pursuant to section 206(b) of the FPA is December 21, 2016 for the proceeding in Docket No. EL17-31-000, and January 6, 2017 for the proceeding in Docket No. EL17-37-000, as discussed in the body of this order.

By the Commission.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.