

167 FERC ¶ 61,150
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Dynegy Marketing and Trade, LLC
Illinois Power Marketing Company

Docket Nos. EL17-54-000

v.

Midcontinent Independent
System Operator, Inc.

Tilton Energy LLC

EL16-108-000

v.

Midcontinent Independent
System Operator, Inc.

American Municipal Power, Inc.

EL17-29-000

v.

Midcontinent Independent
System Operator, Inc.

Northern Illinois Municipal Power
Agency

EL17-31-000

v.

PJM Interconnection, L.L.C.

American Municipal Power, Inc.

EL17-37-000

v.

PJM Interconnection, L.L.C.

(consolidated)

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

(Issued May 16, 2019)

1. On March 28, 2017, Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (collectively, the Dynegy Companies) filed a complaint against Midcontinent Independent System Operator, Inc. (MISO) pursuant to sections 206 and 309 of the Federal Power Act (FPA)¹ and Rule 206 of the Commission's Rules of Practice and Procedure (Complaint).² The Dynegy Companies assert that MISO has been assessing congestion and losses charges on their resources pseudo-tied from MISO into PJM Interconnection, L.L.C. (PJM)³ in a manner that contravenes the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff), resulting in the unjust, unreasonable, and unduly discriminatory imposition of duplicative charges for congestion and losses on these resources. The Dynegy Companies move to consolidate their Complaint with the complaint proceedings in Docket No. EL16-108-000 and in Docket No. EL17-29-000 and, depending on the scope of any settlement and hearing procedures that may be ordered, with the complaint proceedings in Docket No. EL17-31-000 and in Docket No. EL17-37-000.

2. As discussed below, we grant the Complaint in part, deny it in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of March 28, 2017. We also consolidate the instant

¹ 16 U.S.C. §§ 824e, 825h (2012).

² 18 C.F.R. § 385.206 (2018).

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

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proceeding with the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 for purposes of settlement, hearing, and decision.

I. Background

3. In 2014, the Commission approved the request of PJM to amend the PJM Open Access Transmission Tariff (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 resources⁴ from the Capacity Import Limit if they meet certain requirements.⁵ Given these changes to the PJM Tariff, the amount of capacity pseudo-tied from MISO to PJM substantially increased in 2016.⁶

4. The Dynegy Companies state that they are each an indirect, wholly owned subsidiary of Dynegy Inc.⁷ The Dynegy Companies state that through various subsidiaries, Dynegy Inc. produces and sells electric energy, capacity, and certain ancillary services in key U.S. markets, including the MISO and PJM markets. The Dynegy Companies state that they market the output of various generation facilities owned by their affiliates.

5. The Dynegy Companies state that in connection with these marketing activities, the Dynegy Companies have acquired firm transmission and taken the other steps necessary to pseudo-tie portions of generation facilities owned by their affiliates from MISO into PJM.⁸ The Dynegy Companies state that specifically, their affiliates pseudo-tied 937 MW of generation into PJM beginning on June 1, 2016. The Dynegy Companies state that in addition, their affiliates have secured transmission to pseudo-tie

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

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

⁶ MISO Answer at 7.

⁷ Complaint at 3.

⁸ *Id.* at 9.

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another 265 MW of generation by June 1, 2017, which will bring the total pseudo-tie commitment to 1,202 MW.

II. Complaint

6. According to the Dynegy Companies, MISO assesses congestion costs and losses on the Dynegy Companies through the Transmission Usage Charge (TUC).⁹ The TUC is:

A charge attributable to the increased cost of Energy delivered at a given Commercial Node when the Transmission System is operating under constrained conditions or due to losses on the system. The TUC is the per unit charge to support a Through Schedule or Financial Schedule or Generator Self-Supply and is equal to the difference in the [Locational Marginal Price (LMP)] at the sink and the LMP at source (in dollars per/MWh), which includes the Cost of Congestion and the Cost of Losses.¹⁰

7. According to the Dynegy Companies, MISO uses Financial Schedules to assess congestion and losses charges to resources pseudo-tied from MISO into PJM such as the Dynegy Companies' pseudo-tied resources.¹¹ In the MISO Tariff, Financial Schedule is defined as:

A financial arrangement between two Market Participants designating a Source Point, Sink Point and Delivery Point establishing the obligations of the buyer and seller for the payment of Cost of Congestion and Cost of Losses. The Transmission Provider is not the Energy Market Counterparty to the sale of Energy under a Financial Schedule transaction and collects and disburses the [TUC] as agent for the parties to the Financial Schedule.¹²

8. The Dynegy Companies argue that in using Financial Schedules to assess congestion and losses charges against resources pseudo-tied out of MISO, MISO violated the express terms of the MISO Tariff.¹³ The Dynegy Companies assert that Financial

⁹ See Complaint at 10, 12-14. Unless otherwise specified, all capitalized terms herein shall have the same definition as in the MISO Tariff.

¹⁰ MISO Tariff, Module A, Section 1.T.

¹¹ E.g., Complaint at 9-10, 12-13.

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

¹³ Complaint at 12-13.

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Schedules were designed to facilitate bilateral contracts between two Market Participants outside of MISO's market settlement process. The Dynege Companies note, *inter alia*, that the MISO Tariff defines a Financial Schedule “[a] financial arrangement between two Market Participants,” consisting of one “buyer” and one “seller.”¹⁴ The Dynege Companies assert that despite the plain language of the MISO Tariff, MISO has created Financial Schedules that involve only one Market Participant for pseudo-tied resources.¹⁵ The Dynege Companies explain that these Financial Schedules identify the asset owner of a pseudo-tied resource as both the buyer and the seller and that the asset owner is then responsible for TUCs and other costs under the Financial Schedules. The Dynege Companies state that beginning on June 1, 2016, MISO created Financial Schedules for the Dynege Companies designating the same entity as both buyer and seller.

9. The Dynege Companies argue that MISO is not permitted to ignore the plain language of the MISO Tariff.¹⁶ The Dynege Companies disagree with MISO's argument, raised in the MISO Pseudo-Tie Complaint Proceedings, that “Financial Schedules are merely a settlement vehicle, rather than the reason, for the assessed congestion charges.”¹⁷ The Dynege Companies contend that under the FPA, a public utility is not free to use (or misuse) provisions of a tariff however it sees fit on the theory that such provisions are serving as vehicles to ensure that rates are just and reasonable. The Dynege Companies argue that in particular, MISO cannot repurpose Financial Schedules, which were approved for a specific and very different use, as a means of assessing charges to pseudo-tie transactions. The Dynege Companies argue that although RTOs are afforded discretion in interpreting their own tariffs, MISO is obligated to ensure that its actions conform to the explicit provisions of the MISO Tariff. The Dynege Companies assert that, accordingly, MISO cannot rely on a generalized provision of the MISO Tariff in order to ignore specific restrictions with respect to Financial Schedules.

10. The Dynege Companies disagree with MISO's argument that “pseudo-tie transactions . . . better lend themselves to the administrative mechanisms utilized for Financial Schedules,” and that it was necessary for MISO to “utiliz[e] modified capabilities established to administer Financial Schedules” in order to assess TUCs to

¹⁴ *Id.* at 13 (quoting MISO Tariff, Module A, Section 1.F) (emphasis added in Complaint) (additional citations omitted).

¹⁵ *Id.* (citation omitted).

¹⁶ *Id.* at 14.

¹⁷ *Id.* at 15 (quoting MISO's Jan. 25, 2017 Answer in Docket No. EL17-29 at 16; MISO's Sept. 26, 2016 Answer in Docket No. EL16-108 at 14).

pseudo-tied resources.¹⁸ The Dynegy Companies assert that MISO is not authorized to assess TUCs to pseudo-tied resources in the first instance because TUCs are defined in the MISO Tariff as “the per unit charge to support a Through Schedule or Financial Schedule or Generator Self-Supply,” and pseudo-tied resources do not meet the MISO Tariff definition of Through Schedules, Financial Schedules or Generator Self-Supply.¹⁹ The Dynegy Companies assert that MISO cannot violate the MISO Tariff by creating Financial Schedules for pseudo-tied resources, and then insist that TUC charges are necessary under those improper Financial Schedules.

11. The Dynegy Companies note that MISO could have made a filing with the Commission under section 205 of the FPA to modify the MISO Tariff language in order to allow Financial Schedules to be used for purposes of assessing charges to pseudo-tied resources.²⁰ The Dynegy Companies argue that having failed to do, MISO was not permitted to engage in self-help and unilaterally shoehorn congestion charges into the existing Financial Schedule provision in the MISO Tariff. The Dynegy Companies argue that the Commission should therefore find that MISO violated the MISO Tariff by using Financial Schedules to assess charges to pseudo-tied resources. The Dynegy Companies assert that the Commission should direct MISO to cease assessing charges to pseudo-tied resources using Financial Schedules in this manner and to file modifications to the MISO Tariff that would permit MISO to assess appropriate charges for pseudo-tied resources on a going-forward basis.

12. In addition, the Dynegy Companies argue that the Commission should order MISO to refund to the Dynegy Companies all duplicative congestion and losses charges improperly assessed pursuant to Financial Schedules.²¹ The Dynegy Companies state that for the period June 1, 2016 through February 28, 2017, MISO assessed net charges for pseudo-tied resources to the Dynegy Companies totaling approximately \$8.3 million (approximately \$8.5 million with administrative fees) through Financial Schedules.²²

¹⁸ *Id.* at 16 (quoting MISO Sept. 26, 2016 Answer in Docket No. EL16-108 at 15-16).

¹⁹ *Id.* (quoting MISO Tariff, Module A, Section 1.T) (additional citation omitted).

²⁰ *Id.*

²¹ *Id.* at 17.

²² *Id.* at 10 (citing *id.*, Att. A, ¶ 8). Of this \$8.3 million, the Dynegy Companies calculate that MISO assessed them approximately \$4.9 million in congestion charges and approximately \$3.4 million in losses. *Id.*, Att. A, Ex. 1, Grand Total Row. The

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The Dynegy Companies contend that the bulk of those charges were for congestion and losses. Further, the Dynegy Companies assert that they expect a significant proportion of those congestion and losses charges are duplicative of congestion and losses assessed by PJM to the same pseudo-tied resources between the generator bus and the PJM interface through LMPs.²³ The Dynegy Companies argue that these charges are therefore unjust, unreasonable, and unduly discriminatory.

13. In support of their double charge claims, the Dynegy Companies provide a table summarizing the following daily charges to the Dynegy Companies from June 1, 2016 through February 28, 2017: (1) MISO real-time congestion; (2) the PJM day-ahead congestion contained within the LMP that PJM calculates from the Dynegy generator busses to the point of delivery in PJM; (3) MISO losses; (4) PJM losses; (5) PJM administrative fees; and (6) MISO administrative fees.²⁴ The Dynegy Companies summarize that they “paid PJM approximately \$10 million in congestion and loss costs on 3,382,708 MWs from 6/1/16 to 2/28/17, and paid MISO \$8.3 million on the exact same MWs through Financial Schedules.”²⁵

14. The Dynegy Companies state they are not asking that the Commission require MISO to refund all charges improperly assessed pursuant to Financial Schedules but only those congestion and losses charges that are duplicative of congestion charges assessed by PJM.²⁶ The Dynegy Companies argue that accordingly, MISO cannot legitimately argue, as it has in the MISO Pseudo-Tie Complaint Proceedings, that the Dynegy Companies are seeking to avoid responsibility for costs caused by their pseudo-tied resources.

15. The Dynegy Companies note that the RTOs have acknowledged that there is double counting of congestion for pseudo-tied resources.²⁷ The Dynegy Companies explain that the RTOs have discussed commercial and reliability issues raised by the increased use of pseudo-ties from MISO into PJM through the Joint and Common Market

Complaint does not challenge MISO’s assessment of administrative charges on the Dynegy Companies.

²³ *Id.* at 10, 21.

²⁴ *Id.*, Att. A, Ex. 1.

²⁵ *Id.*, Att. A, ¶ 12.

²⁶ Complaint at 17-18.

²⁷ *Id.* at 2.

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Initiative (JCM). The Dynegy Companies present a slide from a presentation at the August 23, 2016 meeting of the JCM that sets forth the RTOs' explanation of the double counting issue.

16. The Dynegy Companies also note that the double counting issue was also discussed by a MISO stakeholder team, the Pseudo-Tie Issue Task Team (the PITT).²⁸ The Dynegy Companies state that a presentation to the January 14, 2016 meeting of the PITT indicated that “MISO agrees there is an issue with how congestion cost is calculated for pseudo tie units.”²⁹ The Dynegy Companies note that the presentation went on to describe the problem as being that “[p]seudo tie units are impacted by [market-to-market] constraints in both markets,” resulting in an “‘overlap’ or ‘mismatch’ . . . when associated [market-to-market] constraints bind.”³⁰ The Dynegy Companies explain that, as noted in another presentation for that same PITT meeting, an additional consequence of this double counting problem is that pseudo-tied “generators will not know the true dispatch set-point until after the fact and significant inefficiencies will exist under this form of dispatch.”³¹ The Dynegy Companies note that that presentation further emphasized that “[t]he MISO and PJM processes need to align to avoid double charging.”³²

17. The Dynegy Companies note that the PITT published its final paper in August 2016.³³ The Dynegy Companies explain that, among other things, the PITT Issues Paper identified several issues relating to the double counting of congestion on pseudo-tied resources:

²⁸ *Id.* at 6.

²⁹ *Id.* at 7 (quoting MISO, *Congestion Cost on Pseudo-tie Units* at 4 (dated Jan. 4, 2016), https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=216149).

³⁰ *Id.*

³¹ *Id.* (quoting MISO, *Pseudo-ties Issues Task Team* at 13 (dated Jan. 14, 2016), https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=216148).

³² *Id.*

³³ *Id.* (citing MISO, *Pseudo-Tied Generation That Lacks Local Visibility* (dated Aug. 30, 2016) (the PITT Issue Paper), https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=219480).

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- This potential issue revolves around the fact that MISO and PJM both collect congestion fees for generating units that are physically located in the interior of the MISO footprint and pseudo-tied to PJM.
- MISO plans to charge congestion fees based on the partial path from the pseudo-tied unit's location in MISO to the PJM interface. Conversely, PJM plans to charge congestion based on the entire path from the pseudo-tied unit's location in MISO to PJM load.
- These different methods of calculating congestion raise the possibility that MISO-based pseudo-tied units will be charged in both systems for the same binding market-to-market constraints.³⁴

18. The Dynegy Companies state that, at least in their case, the problem of the double counting of congestion has been exacerbated by MISO's decision to remove Firm Flow Entitlements (FFE) that were historically assigned to the Dynegy Companies' pseudo-tied resources.³⁵ The Dynegy Companies contend that FFEs were originally assigned to these facilities based on their legacy contributions to serving load on the MISO system and interconnection agreements that pre-date state restructuring initiatives. The Dynegy Companies assert that MISO unilaterally and without notice to the Dynegy Companies removed the FFEs after the facilities were pseudo-tied into PJM. The Dynegy Companies assert that MISO should allow the FFEs to move with the pseudo-tied generation.³⁶ The Dynegy Companies argue that without FFEs to cover anticipated congestion over market-to-market and reciprocal coordinated flowgates, PJM lacks the ability under the Joint Operating Agreement between MISO and PJM to dispatch the pseudo-tied facilities on a day-ahead basis. The Dynegy Companies contend that this results in sub-optimal dispatch and energy sales into PJM that can increase congestion in real-time and thus increase the congestion charges assessed to the pseudo-tied resources.

19. The Dynegy Companies assert that the Commission should establish the earliest possible refund effective date, i.e., the date of filing of the Complaint.³⁷ However, the Dynegy Companies assert that whatever refund effective date the Commission may fix will not be an obstacle to ordering retroactive refunds of duplicative congestion and losses charges assessed through Financial Schedules. Dynegy notes that the Commission

³⁴ *Id.* at 7-8 (quoting the PITT Issues Paper at 6).

³⁵ *Id.* at 10 (citing Att. A, ¶ 15).

³⁶ *Id.*, Att. A, ¶ 16.

³⁷ *Id.* at 18.

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has made clear in past orders that “while we establish a refund effective date, when faced with a tariff violation . . . , the Commission may impose remedies from the date on which the tariff violation occurred.”³⁸

20. The Dynegy Companies state that they lack the data necessary to calculate the extent to which those charges for congestion and losses that MISO has unlawfully assessed on the Dynegy Companies under Financial Schedules were duplicative of charges imposed by PJM.³⁹ The Dynegy Companies state that they therefore request the Commission to establish settlement and hearing procedures for purposes of calculating refunds for MISO’s violations of the MISO Tariff. The Dynegy Companies also request that, if the Commission establishes settlement and hearing procedures, their Complaint be consolidated with the MISO Pseudo-Tie Complaints and, depending on the scope of any settlement and hearing procedures that may be ordered, with the PJM Pseudo-Tie Complaints.⁴⁰

III. Notice of Filing and Responsive Pleadings

21. Notice of the Dynegy Companies’ Complaint was published in the *Federal Register*, 82 Fed. Reg. 16,392 (2017), with interventions and protests due on or before April 17, 2017. American Electric Power Service Corporation (AEP);⁴¹ American Municipal Power, Inc. (AMP); Electric Power Supply Association; Entergy Services, Inc. (Entergy);⁴² Exelon Corporation; Illinois Municipal Electric Agency; MISO Transmission Owners;⁴³ North Carolina Electric Membership Corporation; and PJM filed

³⁸ *Id.* (quoting *Idaho Power Co.*, 145 FERC ¶ 61,122 at n.6 (2013)).

³⁹ *Id.* at 18-19 (citing Att. A, ¶¶ 10, 12).

⁴⁰ *Id.* at 19.

⁴¹ AEP is intervening on behalf of: Public Service Company of Oklahoma and Southwestern Electric Power Company (SWEPCO).

⁴² Entergy is intervening on behalf of: Entergy Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; and Entergy Texas, Inc.

⁴³ The MISO Transmission Owners for this proceeding consist of: Ameren Services Company, as agent for Union Electric Company d/b/a Ameren Missouri, Ameren Illinois Company d/b/a Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Dairyland Power Cooperative; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy
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timely motions to intervene. The Dayton Power and Light Company; NRG Power Marketing LLC and GenOn Energy Management, LLC; Organization of MISO States; and Wabash Valley Power Association, Inc. filed motions to intervene out-of-time.

22. On April 17, 2017, MISO filed an answer, Entergy filed a protest, and AEP filed comments.

23. 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 on the efforts of the RTOs to develop proposed solutions to the congestion overlap issue related to pseudo-ties described in the complaint proceedings. 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 Energy LLC (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.

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

Arkansas, Inc.; Entergy Louisiana, LLC; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; International Transmission Company d/b/a 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.

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A. MISO Answer

25. MISO argues that the Commission should deny the Complaint. MISO states that it expects the congestion overlap issue to be addressed through the solutions being developed by the RTOs and discussed in stakeholder processes, including JCM meetings.⁴⁴ MISO asserts that in the meantime, MISO's actions have been consistent with the MISO Tariff and there is no basis for refunds.

26. MISO disagrees with the Dynegy Companies' assertion that MISO's use of Financial Schedules to account for the congestion costs associated their pseudo-tie transactions is improper due to the lack of two different Market Participants acting as the seller and the buyer.⁴⁵ MISO argues that the Dynegy Companies' interpretation ignores that congestion charges are assessed not because MISO settles them by using Financial Schedules, but because the MISO Tariff independently requires Transmission Customers and Market Participants to compensate MISO for all system usage and costs associated with their transmission service transactions. MISO explains that when the Dynegy Companies send the output of their pseudo-tied units to PJM, the transaction causes congestion and losses on the MISO system and imposes certain other costs on MISO's Market Participants.⁴⁶ MISO asserts that the MISO Tariff requires these costs to be paid irrespective of whether a Financial Schedule or some other cost assessment mechanism is used to bill the Dynegy Companies for their pseudo-tie transactions. MISO argues that its reading of the MISO Tariff is consistent with cost causation principles, the FPA non-discrimination requirements, and MISO's market design.⁴⁷

27. MISO asserts that because the Dynegy Companies utilize firm point-to-point transmission service under the MISO Tariff to deliver their pseudo-tied generation to the MISO-PJM border, they are required to pay all other charges associated with its transmission service.⁴⁸ MISO notes that Schedule 7 of the MISO Tariff (Long-Term Firm and Short-Term Firm Point-To-Point Transmission Service) is clear that the Reserved Capacity charges under that Schedule, which compensate MISO's Transmission Owners, are "in addition to other applicable charges specified in the [MISO] Tariff." MISO also notes that Section 15.7 of the MISO Tariff further provides

⁴⁴ MISO Answer at 6.

⁴⁵ *Id.* at 4, 15.

⁴⁶ *Id.* at 11.

⁴⁷ *Id.* at 18.

⁴⁸ *Id.* at 13 (citing Complaint, Att. A, ¶ 6).

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that “System Losses are associated with all Transmission Service” and requires MISO to “assess all Market Participants the Marginal Losses Component of Ex Post LMP,” as set forth in certain specified provisions applicable to Day-Ahead and Real-Time markets. MISO notes that its Credit Policy recognizes that “all Transmission Service transactions are subject to congestion costs and marginal losses.”⁴⁹ MISO states that requirements to pay congestion and losses are further emphasized in provisions applicable to Module B Transmission Service, such as Section 22.2 (Additional Charge to Prevent Abuse) and Section 23.2 (Limitations on Assignment or Transfer of Service).⁵⁰

28. MISO asserts that while pseudo-tie transactions are functionally identical to exports or through schedules, they better lend themselves to the administrative mechanisms utilized for Financial Schedules.⁵¹ MISO states that pseudo-tie administration presents certain unique modeling, meter data reporting and settlement burdens and challenges. MISO explains that by utilizing modified capabilities established to administer Financial Schedules, MISO resolved these challenges in order to ensure that the Dynegy Companies’ commercial choices are properly supported. MISO asserts that it was appropriate to clarify, in the BPM, the use of Financial Schedules procedures and capabilities for the purposes of settling MISO Tariff-required congestion and losses charges associated with pseudo-tied units. MISO notes that Section 2.7.3 of MISO’s Market Settlements BPM clarifies that Financial Schedules procedures and capabilities can be used for the purposes of settling MISO Tariff-required congestion and loss charges associated with pseudo-tied units,⁵² and that Section 2.7.3 of its Market Settlements BPM, as well as the other Market Settlements BPM provisions applicable to pseudo-ties, have been applied since MISO launched its energy markets in 2005.

⁴⁹ *Id.* (quoting MISO Tariff, Att. L).

⁵⁰ *Id.* n.54 (quoting MISO Tariff, Module B, Section 22.2 (“In addition, the Market Participant shall pay for marginal Losses and any congestion relief costs based on the actual transmission path for which service is scheduled according to provisions in Module C.”); MISO Tariff, Module B, Section 23.2 (“In addition, the Market Participant shall be financially responsible for any Energy, Marginal Congestion Charge, and Marginal Losses associated with related Market Participant’s transactions . . .”)).

⁵¹ *Id.* at 14.

⁵² *Id.* at 18-19 (citing BPM-005, Market Settlements, Section 2.7.3).

29. MISO argues that the provisions are consistent with the MISO Tariff because there is no modification to any of the formulas established by the MISO Tariff to calculate the Cost of Congestion and the Cost of Losses.⁵³ MISO asserts that use of the existing Financial Schedule settlement infrastructure implements these requirements in a cost-efficient way for MISO and its Market Participants, including pseudo-tie Transmission Customers.

30. Further, MISO argues that the Dynegy Companies have not demonstrated that any MISO Tariff provision or MISO practice is unjust and unreasonable.⁵⁴ MISO asserts that the fact that MISO and PJM impose charges under their Commission-approved Tariffs on a customer that does business in both markets does not necessarily indicate that the customer is being “double charged.” Moreover, although MISO explains that some congestion cost overlap may exist between MISO’s and PJM’s markets, MISO contends that the alleged double counting, even if confirmed with respect to the Dynegy Companies’ pseudo-tie transactions, arises only under a narrow set of circumstances: when a Reciprocally Coordinated Flowgate under the MISO-PJM Joint Operating Agreement (JOA) binds simultaneously in both the MISO and PJM markets. MISO contends that the alleged double counting applies only to congestion charges, asserting that there could be no double counting, even in theory, in any other circumstances or with respect to any other charges, such as losses or administrative charges.⁵⁵

31. MISO asserts that to the extent action is required to address the double counting issue, the Commission should base such action on a comprehensive record, including an analysis of costs, cost causers, benefits, and beneficiaries of all aspects of the issue.⁵⁶ MISO states that it and PJM are currently working on developing a solution to the issue. MISO notes, *inter alia*, that on April 7, 2017, the RTOs held a special JCM conference call meeting to discuss a revised solution and detailed examples, illustrating how the congestion overlap would be accounted for in market administration, as well as, providing rebates of any overlapping congestion costs in the appropriate markets.⁵⁷

⁵³ *Id.* at 16.

⁵⁴ *Id.* at 19.

⁵⁵ *Id.* at 6, 19-20.

⁵⁶ *Id.* at 22-23.

⁵⁷ *Id.* at 10.

32. In addition, MISO argues that the Dynegy Companies' FFE assertions fail to identify any MISO Tariff or JOA provision violated by MISO or to demonstrate that any MISO Tariff provisions are not just and reasonable.⁵⁸ MISO further asserts that there is not any showing in the Complaint that the FFE provisions established in the JOA are in any way unjust and unreasonable. MISO disagrees with the Dynegy Companies' argument that it should allow the FFEs to move with the pseudo-tied generation, asserting that there is no basis in the JOA for any such transfer.

33. MISO explains that FFEs are based on historical uses of the system.⁵⁹ MISO claims that the Dynegy Companies' assertion that PJM is entitled to any modified allocation of FFE due to the Dynegy Companies recently acquired transmission service and decision to administer interchange transactions to PJM is inconsistent with Section 6.4 of the JOA Congestion Management Protocol. MISO asserts that the JOA does not specify alteration of FFE allocations with respect to pseudo-tie modeling. MISO contends that FFEs are intended to represent historic, pre-market uses of the transmission system and would not be appropriately allocated to another party to the JOA, namely PJM, for a new use of the transmission system, specifically export energy to serve nonnative load in an adjacent balancing authority area.

34. MISO argues that the Dynegy Companies misunderstand the purpose of FFE allocations.⁶⁰ MISO asserts that these allocations are needed to protect the equity of historical users by providing the RTO a financial property right. MISO contends that the Dynegy Companies' claim that their new service, which is not a historic use of the system, authorizes them or MISO to re-assign financial property rights (i.e., FFEs) to PJM is not supported by the JOA.

35. MISO asserts that the Commission should order no refunds in this proceeding.⁶¹ MISO argues that if the Commission decides that any MISO practice or MISO Tariff provision is no longer just and reasonable, the relief should be prospective only, as of the date of the Commission's order.⁶² MISO notes that in RTO markets, the Commission has

⁵⁸ *Id.* at 23-24.

⁵⁹ *Id.* at 24.

⁶⁰ *Id.* at 25.

⁶¹ *Id.* at 26.

⁶² *Id.* at 27.

(continued ...)

declined to require refunds where they would require re-running of the market or would have other adverse effects on the market.⁶³

B. Entergy Protest

36. Entergy argues that the Commission should find that MISO has properly followed the MISO Tariff and cost causation principles in charging congestion, losses and related administrative charges to the Dynegey Companies.⁶⁴ Entergy also argues that the Commission should find that the Dynegey Companies have failed to meet their burden under section 206 to show that the MISO Tariff or the rates charged pursuant to the MISO Tariff are unjust and unreasonable.⁶⁵

37. Entergy states that it supports MISO's answer to the Tilton complaint in Docket No. EL16-108-000 with regard to provisions of the MISO Tariff that apply to pseudo-ties and the Financial Schedules that MISO employs to collect these costs from the Dynegey Companies.⁶⁶ Entergy contends that by using Financial Schedules for purposes of settlement, MISO is simply using its existing market settlements infrastructure to assess these otherwise required charges or credits. Entergy further contends that if the Commission were to find, as the Dynegey Companies request, that it is a filed rate violation for MISO to use a Financial Schedule in which a Market Participant is listed as both the buyer and the seller, refunds could be due for all the charges assessed through use of the Financial Schedules. Entergy asserts that it would be an immense undertaking to determine such refunds and surcharges. Entergy contends that such an undertaking is unwise and unwarranted based on the Dynegey Companies' insufficient showing of a violation of the MISO Tariff.⁶⁷

⁶³ *Id.* (citing *Ameren Services Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at P 157 (2009), *California Ind. Sys. Operator, Inc.*, 120 FERC ¶ 61,271, at PP 24-25 (2007)).

⁶⁴ Entergy Protest at 13.

⁶⁵ *Id.* at 2.

⁶⁶ *Id.* at 16.

⁶⁷ *Id.* at 18.

38. Entergy asserts that cost causation principles require that the Dynegey Companies pay for congestion from its resource to the MISO border.⁶⁸ Entergy asserts that because the Dynegey Companies' resources cause real-time congestion on MISO's system which in turn requires MISO to redispatch the resources under its control in order to keep the system balanced, the Dynegey Companies must pay MISO for the costs they impose on MISO's system.⁶⁹ Entergy avers that if MISO did not assess congestion charges on the Dynegey Companies, these costs would continue to be incurred—but would shift to other Market Participants on MISO's system.⁷⁰

39. Further, Entergy argues that the Dynegey Companies' claim that MISO should refund a "significant proportion" of the \$3.4 million in transmission losses charges that the Dynegey Companies incurred during the period is without any basis and should be rejected.⁷¹ Entergy argues that the Dynegey Companies should pay for transmission losses on the transmission system that they use. Entergy asserts that to do otherwise would impermissibly shift the costs of the Dynegey Companies' transactions to other users on the MISO system. Entergy explains that the Dynegey Companies' resources are located on and use MISO's system to reach the MISO-PJM border. Entergy states that it doubts there are any double charges for transmission losses, but if there were any, they would result from PJM charging for losses on MISO's system, and in that instance, the Dynegey Companies' claim against MISO is misplaced because PJM should be responsible for any refunds.

40. Further, Entergy asserts that the Dynegey Companies' argument that they were charged twice for the same congestion is unsupported.⁷² Entergy argues that the Dynegey Companies inappropriately conflate the congestion charges they receive from MISO that are related to binding market-to-market constraints and those that are not. Entergy notes that the RTOs have acknowledged the possibility of overlapping congestion charges on binding market-to-market flowgates but agree that there are no overlapping congestion charges on non-market-to-market flowgates.⁷³

⁶⁸ *Id.* at 10.

⁶⁹ *Id.* at 9.

⁷⁰ *Id.* at 12.

⁷¹ *Id.* at 10.

⁷² *Id.* at 13.

⁷³ *Id.* (citing *Joint and Common Market Presentation*, Item 4: Pseudo-Ties, at 15 (continued ...))

41. Entergy argues that the Dynegy Companies have failed to meet the threshold showing under section 206 of the FPA by alleging duplicative charges without any support that they were actually charged twice for the same service.⁷⁴ Entergy asserts that the Dynegy Companies' table of daily congestion charges does not take into account that MISO has calculated the congestion on its system (and on coordinated Market-To-Market flowgates) in the real-time market.⁷⁵ Entergy notes that PJM's charges listed in that table are for day-ahead congestion for delivery inside PJM, which is a different service altogether.

42. In addition, Entergy asserts, *inter alia*, that the Dynegy Companies' references to the acknowledgement by the RTOs of the possibility of congestion double counting through the Market-To-Market process also do not support their claim of double charging.⁷⁶ Entergy asserts that the Dynegy Companies have not shown, for example, that their resources flow power over the market-to-market flowgates or have attempted to quantify any harm from a congestion overlap on Market-To-Market flowgates. Further, Entergy contends that the Dynegy Companies have not explained why they believe that a significant proportion of \$4.9 million in congestion charges from MISO is for Market-To-Market flowgate congestion. Entergy notes that, as the RTOs have publicly stated, the possibility of congestion double counting is small and the harm is expected to be limited. Entergy argues that because the Dynegy Companies' Complaint does not address these issues, they have failed to show that they have been double charged for congestion.

43. Entergy states that in the alternative, if the Commission does not deny the Complaint in full, Entergy supports the Dynegy Companies' motion to consolidate the instant Complaint with all other pending pseudo-tie complaints.⁷⁷ Entergy asserts that the Commission should establish settlement discussions led by an administrative law judge or a technical conference so that all parties to the proceedings and all entities affected by generation pseudo-tied out of MISO may participate in discussions and share information on how to address the multi-faceted pseudo-tie problem.⁷⁸ Entergy notes that MISO has

(Aug. 23, 2016)).

⁷⁴ *Id.* at 13-14.

⁷⁵ *Id.* at 14 (citing Complaint, Att. A, Ex. 1).

⁷⁶ *Id.*

⁷⁷ *Id.* at 21.

⁷⁸ *Id.*

(continued ...)

identified additional costs and harms from pseudo-tied generation, including uncompensated commitment costs and reliability harms.⁷⁹ Entergy argues that the Commission should not address the single issue of potential double congestion without, at the same time, addressing these harms that pseudo-ties impose on participants in the MISO market.

C. AEP Comments

44. AEP asserts that while the Complaint specifically addresses MISO's assessment of congestion and losses charges to resources physically located within MISO's footprint but pseudo-tied into PJM, the issue of duplicative charges is broader than that scenario. AEP notes that certain loads of its affiliate SWEPCO that are physically located within MISO but are pseudo-tied into Southwest Power Pool, Inc. (SPP) also face congestion and losses charges related to the pseudo-tie that SWEPCO believes are duplicative.⁸⁰ AEP urges the Commission to conduct a broad review of MISO's practices related to the assessment of congestion and losses charges on resources and loads physically located within MISO's footprint that are pseudo-tied into another balancing authority area, whether that balancing authority area is PJM or SPP.

IV. Related Proceedings

A. Other Pseudo-Tie Congestion Complaint Proceedings

45. On August 25, 2016, Tilton filed a complaint against MISO in Docket No. EL16-108-000. Tilton alleges that MISO deviated from provisions of the MISO Tariff by imposing congestion and administrative charges on Tilton. Tilton also alleges that 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.

46. On December 21, 2016, Northern Illinois Municipal Power Agency (NIMPA) filed a complaint against PJM in Docket No. EL17-31-000. NIMPA alleges that PJM deviated from provisions of the PJM Tariff by imposing charges that assess congestion costs starting at the nodal point of their facilities within the MISO region, rather than at the interface between MISO and PJM. NIMPA further asserts that this method of calculating such charges is unjust, unreasonable, and unduly discriminatory because it

⁷⁹ *Id.* at 20.

⁸⁰ AEP Comments at 3.

(continued ...)

results in duplicative costs associated with overlapping transmission service from MISO into PJM. On January 6, 2017, AMP also filed a complaint against PJM in Docket No. EL17-37-000. AMP's complaint is substantively similar to NIMPA's complaint.

47. In this order, we refer to the instant Complaint, and the four other complaints described above,⁸¹ collectively as the MISO/PJM Pseudo-Tie Congestion Complaints.

B. RTOs' Phase 1 and Phase 2 Revisions

48. 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.⁸² 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.⁸³ 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.

49. 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

⁸¹ *See supra* PP 45-46.

⁸² 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.

⁸³ The overlap could be a payment or a charge depending on the location of the constraint and the impact of the pseudo-tie.

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and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface.

50. 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.

51. On July 31, 2018, the Commission accepted the Phase 1 Revisions, effective August 1, 2018.⁸⁴ 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.”⁸⁵ 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.⁸⁶

52. On June 1, 2018, PJM submitted its Phase 2 Revisions, proposing to modify the PJM Tariff and the PJM Amended and Restated Operating Agreement to (1) charge or credit pseudo-tie transactions from MISO to the PJM-MISO interface for real-time deviations from day-ahead schedules for congestion resulting from market-to-market coordination pursuant to the JOA; and (2) provide a new transaction type to hedge exposure to financial risk for pseudo-tied resources from PJM into MISO (PJM Phase 2 Revisions). On July 31, 2018, the Commission accepted PJM’s Phase 2 Revisions effective August 1, 2018, finding that they address concerns about the potential for congestion charge overlap.⁸⁷ Again, the Commission found that the claims about the overlapping congestion charges in the complaints were beyond the scope of the Phase 2

⁸⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 3 (2018) (Phase 1 Order).

⁸⁵ *Id.* P 22.

⁸⁶ *Id.* P 30.

⁸⁷ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073 at P 17 (2018) (PJM Phase 2 Order).

(continued ...)

Revisions proceeding and stated that it would address the arguments raised in the MISO/PJM Pseudo-Tie Congestion Complaints in those complaint dockets.⁸⁸

53. On October 2, 2018, as amended on January 19, 2019, MISO filed its Phase 2 Revisions to (1) address how Market Participants with pseudo-ties out of MISO can use Virtual Transactions to align Financial Transmission Rights and TUCs; and (2) modify Schedule 17 (Energy Market Support Administrative Service Cost Adder) to reduce the administrative charges assessed to Market Participants with a pseudo-tie of generation or load out of MISO (MISO Phase 2 Revisions). On March 19, 2019, the Commission accepted the MISO Phase 2 Revisions, subject to condition, effective March 1, 2019.⁸⁹ 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.⁹⁰ 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.⁹¹

V. Discussion

A. Procedural Matters

54. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the 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), the Commission will grant the late-filed motions to intervene of The Dayton Power and Light Company; NRG Power Marketing LLC and GenOn Energy Management, LLC; Organization of MISO States; and Wabash Valley Power Association, Inc. given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

⁸⁸ *Id.* P 44.

⁸⁹ *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186 (2019) (MISO Phase 2 Order).

⁹⁰ *Id.* PP 59, 61.

⁹¹ *Id.* PP 52, 56, 63.

55. 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 Complainants' June 28, 2018 answer to MISO's answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

56. As discussed below, we grant the Complaint in part, deny it in part, establish hearing and settlement judge procedures with respect to appropriate refunds, and establish a refund effective date of March 28, 2017. We also consolidate the instant proceeding with the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 for purposes of settlement, hearing, and decision.

1. Tariff Authorization to Assess Congestion and Losses Charges

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

58. The Dynegy Companies are MISO Transmission Customers taking service under Schedule 7 of the MISO Tariff (Long-Term Firm Point-to-Point Transmission Service) to facilitate its pseudo-tie transactions.⁹² The Dynegy Companies are thus required to pay the applicable charges set forth on Schedule 7 "in addition to other applicable charges specified in the [MISO] Tariff."⁹³ While Schedule 7 does not itself specify what other MISO Tariff charges are applicable, other provisions in the MISO Tariff identify congestion and loss charges as applicable to all transmission service transactions, including those associated with pseudo-tie transactions. Specifically, Attachment L (Credit Policy) recognizes that all transmission service transactions are subject to the

⁹² Schedule 7 of the MISO Tariff states, in part:

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

⁹³ MISO Tariff, Schedule 7.

(continued ...)

costs of congestion and losses.⁹⁴ In addition, Section 15.7 of the MISO Tariff provides for the assessment of marginal losses on all transmission service including transmission service associated with pseudo-tied resources.⁹⁵ Moreover, Section 23.2 (Limitations on Assignment or Transfer of Service) identifies congestion charges as among the transmission service costs for which Market Participants are financially responsible.⁹⁶ Section 23.2 references, *inter alia*, Section 40.4. While section 40.4 is reserved, it has a non-reserved Subsection 40.4.2 (Financial Schedule Settlements) that provides, in part, a calculation for the TUC, i.e., the costs of congestion and losses to be assessed to buyers

⁹⁴ Attachment L of the MISO Tariff states, in part:

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

⁹⁵ Section 15.7 of the MISO Tariff states:

System Losses are associated with all Transmission Service including Transmission Service associated with Grandfathered Agreements. The Transmission Provider shall assess to Market Participants the Marginal Losses Component of LMP, as specified in Sections 39.2.9.c.ii, 39.3.3.c.ii, 40.2.11, and 40.4.1.

⁹⁶ Section 23.2 of the MISO Tariff states, in part:

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

The fact that the MISO Tariff requires customers to pay these charges on redirects necessarily assumes that they are also paid on the original Receipt and Delivery Points.

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and sellers under Financial Schedules designated to be settled in the Real-Time Energy and Operating Reserve Market.⁹⁷

59. We note that pseudo-tie transactions that utilize MISO's Transmission System cause real-time congestion costs on MISO's Transmission System,⁹⁸ and we find that MISO properly settles the congestion charges associated with such transactions as a part of the MISO real-time market. Consistent with this finding, Section 2.7.3 of the Market Settlements BPM clarifies that the settlement of pseudo-tied generation within the MISO Balancing Authority Area to an external Balancing Authority Area is "only applicable to the [real-time market]." We further note that it has been MISO's standard practice since it launched its energy markets in 2005 to assign Financial Schedules to pseudo-tie transactions, as reflected in MISO's BPMs.⁹⁹ Thus, for more than ten years, MISO has used the procedures and capabilities of Financial Schedules for the purpose of settling MISO Tariff-required congestion and losses charges associated with pseudo-tie transactions.¹⁰⁰ We recognize both that the MISO Tariff does not explicitly state that a Financial Schedule will be created for a pseudo-tie transaction and that the MISO Tariff's definition of Financial Schedule refers to "two Market Participants." However, given that the MISO Tariff does not specify what settlement vehicle MISO must use to assess congestion charges on pseudo-tie transactions, and such charges are settled in the real-time market, we find it reasonable that MISO assigned Financial Schedules to Dynegy Companies' pseudo-tie transactions and assessed congestion costs via the TUC.¹⁰¹

60. In sum, we find that the MISO Tariff authorizes MISO to assess congestion and loss charges on the Dynegy Companies, and that MISO did not violate its Tariff by using Financial Schedules to do so. Schedule 7, Attachment L, Section 15.7, and Section 23.2 of the MISO Tariff recognize and provide for the imposition of congestion and loss

⁹⁷ MISO Tariff, Module C, Section 40.4.2.

⁹⁸ See, e.g., MISO Answer at 4-5, 11; Entergy Protest at 10-12.

⁹⁹ Section 2.7.3 of the Market Settlements BPM states, in part "[w]ith these [pseudo-tied] volumes, a Pseudo Real-Time Financial Schedule is created." Additionally, we note that Section 2.7.3 of the Market Settlements BPM states, in part, that "[p]seudo-tied Generation Resources are subject to congestion and loss charges between their Resource and the Interface CPNode where the energy is being exported."

¹⁰⁰ MISO Answer at 15-16.

¹⁰¹ MISO explains that by utilizing modified capabilities established to administer Financial Schedules, MISO was able to ensure that the Dynegy Companies' commercial choices are properly supported. *Id.* at 14-15.

charges on the Dynegy Companies, while Section 40.4.2—when read in conjunction with these provisions—specifies the calculation of such charges.

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

61. As discussed below, we find the Dynegy Companies have not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess congestion and administrative charges on the Dynegy Companies. However, we find that there was the potential for the RTOs to assess unjust and unreasonable overlapping or duplicative congestion charges prior to the effective dates of the Phase 1 and Phase 2 filings, and thus we establish hearing and settlement procedures to consider the extent to which the Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to such charges and are due refunds.

62. We find that Dynegy has not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess congestion and losses charges on the Dynegy Companies.

63. The Dynegy Companies assert that they expect a significant proportion of the approximately \$8.3 million of the congestion and losses charges that MISO has assessed their pseudo-tied resources from June 1, 2016 through February 28, 2017 are duplicative of congestion and losses assessed by PJM to the same resources through LMPs. Therefore, the Dynegy Companies argue that these charges are unjust, unreasonable, and unduly discriminatory.

64. First, regarding the Dynegy Companies’ claim that they have been assessed duplicative losses, MISO explains that there could be no overlapping losses charges, even in theory; any overlapping charges apply only to congestion and arise solely when the RTOs’ coordinated market-to-market flowgates bind in both markets.¹⁰² In addition, the Dynegy Companies have not provided sufficient evidence to demonstrate that they have been subject to overlapping losses charges.

65. Second, in the Complaint, the Dynegy Companies argue, *inter alia*, that the congestion overlap issue, to the extent it affects the Dynegy Companies, has been exacerbated by MISO’s decision to remove FFEs that were historically assigned to their pseudo-tied resources. We agree with MISO that Dynegy Companies’ assertions regarding MISO’s administration of FFEs fail to identify any specific Tariff or JOA provision allegedly violated by MISO. The Dynegy Companies also do not allege and do not demonstrate that any of the FFE provisions established in the JOA are unjust,

¹⁰² *Id.* at 6, 19-20.

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unreasonable, unduly discriminatory or preferential. Further, as MISO explains, under the JOA, FFEs are assigned based on historic flows and not current system conditions.¹⁰³ Thus, we reject the Dynegy Companies' argument that MISO should re-assign the FFEs to PJM to move with the Dynegy Companies' pseudo-tied generation.

66. Finally, the Dynegy Companies' argue that they have been subject to overlapping congestion charges assessed by the RTOs. We note that the Commission has accepted the RTOs' Phase 1 and Phase 2 filings to address prospective concerns regarding such charges. Further, the MISO Phase 2 Order found that the RTOs have demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions have eliminated the congestion overlap.¹⁰⁴ Thus, we find that the JOA and other sections of the MISO Tariff as currently on file are just and reasonable, and we will not require MISO to make further revisions to the MISO Tariff.

67. However, with respect to the Dynegy Companies' argument that they have been subject to overlapping congestion charges assessed by the RTOs prior to the acceptance of Phase 1 and Phase 2 Revisions, based on the record before us and the statements by the RTOs in making their Phase 1 and Phase 2 Revisions,¹⁰⁵ 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.¹⁰⁶ We therefore

¹⁰³ See JOA, Att. 2, Section 6.4.

¹⁰⁴ MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61.

¹⁰⁵ See, e.g., MISO Answer at 5-8, 19-23; Complaint at 6; 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).

¹⁰⁶ 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 49; see also Phase 1 Order, 164 FERC ¶ 61,069 at P 4.

(continued ...)

grant the Dynegy Companies' Complaint, in part, finding that to the extent the Dynegy Companies were assessed overlapping or duplicative congestion charges by the RTOs, such charges were unjust and unreasonable.¹⁰⁷

68. We find that determining what refunds are appropriate to the Dynegy Companies to remedy the overlapping or duplicative congestion charges raises issues of material fact that cannot be resolved based on the record before us, and that are more appropriately addressed in the hearing and settlement judge procedures ordered below. Because of the existence of common issues of law and fact regarding the extent to which the Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds, we grant the motions to consolidate and consolidate the instant Complaint proceeding with the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 for purposes of settlement, hearing, and decision. We believe that consolidating these proceedings will promote administrative efficiency.

69. 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.¹⁰⁸ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.¹⁰⁹ 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.

¹⁰⁷ 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").

¹⁰⁸ 18 C.F.R. § 385.603 (2018).

¹⁰⁹ 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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70. In cases where, as here, the Commission institutes an investigation on complaint under section 206 of the FPA, section 206(b) requires that the Commission establish a refund effective date that is no earlier than the date a complaint was filed, but no later than five months after the filing date. Section 206(b) permits the Commission to order refunds for a 15-month refund period following the refund effective date. Consistent with our general policy of providing maximum protection to customers,¹¹⁰ we will set the refund effective date at the earliest date possible, i.e., March 28, 2017.

71. 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) The Dynegy Companies' Complaint is hereby granted in part and denied in part, as discussed in the body of this order.

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

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

(D) 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

¹¹⁰ 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).

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.

(E) 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.

(F) 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.

(G) The refund effective date established pursuant to section 206(b) of the FPA is March 28, 2017, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.