

169 FERC ¶ 61,122
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Tilton Energy LLC

Docket Nos. EL16-108-001

v.

Midcontinent Independent
System Operator, Inc.

American Municipal Power, Inc.

EL17-29-001

v.

Midcontinent Independent
System Operator, Inc.

Northern Illinois Municipal Power Agency

EL17-31-001

v.

PJM Interconnection, L.L.C.

American Municipal Power, Inc.

EL17-37-001

v.

PJM Interconnection, L.L.C.

Dynegy Marketing and Trade, LLC
Illinois Power Marketing Company

EL17-54-001

v.

Midcontinent Independent
System Operator, Inc.

(consolidated)

ORDER DENYING REHEARING AND CLARIFICATION

(Issued November 21, 2019)

1. On May 16, 2019, the Commission issued four orders in the captioned proceedings on complaints filed by Tilton Energy LLC (Tilton), American Municipal Power, Inc. (AMP), and Dynegy Marketing and Trade, LLC and Illinois Power Marketing Company (together, the Dynegy Companies) against Midcontinent Independent System Operator, Inc. (MISO), and by Northern Illinois Municipal Power Agency (NIMPA) and AMP against PJM Interconnection, L.L.C. (PJM).¹ The May 2019 Orders consolidated the captioned proceedings for purposes of settlement, hearing, and decision on certain remaining issues.
2. On June 17, 2019, Tilton, AMP, NIMPA, and the Dynegy Companies (together, Complainants) filed a joint request for rehearing and clarification of the May 2019 Orders (Joint Rehearing Request), and Illinois Municipal Electric Agency (IMEA) filed a request for expedited clarification or rehearing of the May 2019 Orders (IMEA Rehearing Request). In this order, we deny the requests for rehearing and clarification.

I. Background**A. MISO/PJM Pseudo-Tie Congestion Complaints**

3. Complainants stated in their complaints that they are owners of resources or shares of resources that are pseudo-tied from MISO to PJM.² Tilton filed its complaint against MISO on August 25, 2016, in Docket No. EL16-108-000 (Tilton Complaint). Tilton

¹ *Tilton Energy LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,147 (2019) (Tilton Complaint Order); *Am. Mun. Power, Inc. v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,148 (2019) (AMP-MISO Complaint Order); *N. Ill. Mun. Power Agency v. PJM Interconnection, L.L.C.*, 167 FERC ¶ 61,149 (2019) (NIMPA/AMP Complaint Order); *Dynegy Marketing and Trade, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,150 (2019) (Dynegy Companies Complaint Order) (collectively, May 2019 Orders). Both MISO and PJM are Commission-approved regional transmission organizations (RTOs). In this order, MISO and PJM are collectively referred to as the RTOs.

² 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.”).

alleged that MISO violated the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) by assessing congestion and administrative charges for transmission services provided to Tilton's pseudo-tied resource, and further alleged that MISO's assessment of such charges was unjust, unreasonable, and unduly discriminatory because, *inter alia*, it resulted in the duplicative assessment of congestion and administrative charges by both MISO and PJM. On December 19, 2016, AMP filed a complaint against MISO in Docket No. EL17-29-000, and like Tilton, alleged that MISO deviated from provisions of the MISO Tariff by imposing congestion and administrative charges on AMP's pseudo-tied resource and that such charges were unjust, unreasonable, and unduly discriminatory (AMP-MISO Complaint). On March 28, 2017, the Dynegy Companies filed a complaint against MISO in Docket No. EL17-54-000, alleging that MISO violated the MISO Tariff and assessed unjust, unreasonable and duplicative congestion and losses charges on their pseudo-tied resources (Dynegy Companies Complaint).

4. On December 21, 2016, NIMPA filed a complaint against PJM in Docket No. EL17-31-000, alleging that PJM deviated from provisions of the PJM Open Access Transmission Tariff (PJM Tariff) by imposing charges that assess congestion costs starting at the source nodal point of its pseudo-tied resource within the MISO region, rather than at the MISO-PJM interface (NIMPA Complaint). NIMPA further asserted that this method of calculating such charges is unjust, unreasonable, and unduly discriminatory because it results in duplicative costs associated with overlapping transmission service from MISO into PJM. On January 6, 2017, AMP also filed a complaint against PJM in Docket No. EL17-37-000 that was substantively similar to NIMPA's complaint (AMP-PJM Complaint).

5. In this order, we refer to the complaints described above³ collectively as the MISO/PJM Pseudo-Tie Congestion Complaints.

B. RTOs' Phased Revisions to the Joint Operating Agreement and Tariffs

6. On October 23, 2017, as amended January 29, 2018 and May 31, 2018, MISO and PJM filed identical proposed revisions to their Joint Operating Agreement (JOA) as the first phase of their efforts to address the overlap in congestion charges (Phase 1 Revisions). The RTOs explained that the JOA contained provisions for coordinated congestion management over Reciprocally Coordinated Flowgates, and that when such a flowgate binds simultaneously in both MISO and PJM, that flowgate can create overlapping congestion charges. 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

³ See *supra* PP 3-4.

Balancing Authority. At the same time, the Attaining Balancing Authority would 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 would assess congestion from the pseudo-tied resource to the interface. 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.

7. On July 31, 2018, the Commission accepted the Phase 1 Revisions, effective August 1, 2018.⁴ 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.”⁵

8. On June 1, 2018, PJM submitted the second phase of its revisions (PJM 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 MISO-PJM 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. On July 31, 2018, the Commission accepted the PJM Phase 2 Revisions effective August 1, 2018, finding that they address concerns about the potential for congestion charge overlap.⁶

9. On October 2, 2018, as amended on January 19, 2019, MISO filed its second phase revisions (MISO 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; 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. On March 19, 2019, the Commission accepted the MISO Phase 2 Revisions, subject to

⁴ *Midcontinent Indep. Sys. Operator, Inc.*, 164 FERC ¶ 61,069, at P 3 (2018) (Phase 1 Order), *reh’g denied*, 169 FERC ¶ 61,038 (2019).

⁵ Phase 1 Order, 164 FERC ¶ 61,069 at P 22.

⁶ *PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,073, at P 17 (2018) (PJM Phase 2 Order), *reh’g denied*, 169 FERC ¶ 61,039 (2019).

condition, effective March 1, 2019.⁷ The Commission found that the RTOs had demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions eliminated the congestion charge overlap.⁸

C. May 2019 Orders

10. As discussed further below,⁹ in the May 2019 Orders, the Commission granted the MISO/PJM Pseudo-Tie Congestion Complaints in part and denied them in part. Specifically, the Commission granted the MISO/PJM Pseudo-Tie Congestion Complaints with respect to the alleged duplicative congestion charges, finding that prior to the Commission's acceptance of the Phase 1 and Phase 2 Revisions, the potential for the imposition of overlapping or duplicative congestion charges on pseudo-tied resources existed when a Reciprocally Coordinated Flowgate binds simultaneously in both MISO and PJM. Accordingly, the Commission established hearing and settlement judge procedures with respect to appropriate refunds, established a refund effective date for each complaint, and consolidated the MISO/PJM Pseudo-Tie Congestion Complaint proceedings for purposes of the further procedures. However, the Commission denied Complainants' allegations that the RTOs violated their Tariffs by assessing these charges, finding that the MISO Tariff authorized MISO to assess congestion, administrative, and losses charges with respect to transmission service for pseudo-tied resources,¹⁰ and that the way PJM calculated congestion charges associated with its transmission service was not inconsistent with the PJM Tariff or the MISO-PJM JOA.¹¹ The Commission also rejected claims that MISO's assessment of administrative charges and losses charges overlapped with charges assessed by PJM.¹²

⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 166 FERC ¶ 61,186 (2019) (MISO Phase 2 Order), *reh'g denied*, 169 FERC ¶ 61,121 (2019).

⁸ MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61.

⁹ *See infra* section III.

¹⁰ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 69; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 78; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at PP 57, 61.

¹¹ NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 48.

¹² Tilton Complaint Order, 167 FERC ¶ 61,147 at P 82; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 92; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 64.

II. Procedural Matters

11. On July 2, 2019, PJM filed a motion for leave to answer and answer to the IMEA Rehearing Request (PJM July 2 Answer), and MISO filed a motion for leave to answer and answer to the Joint Rehearing Request and to the IMEA Rehearing Request (MISO Answer). On July 9, 2019, IMEA filed a motion for leave to answer and answer to the PJM July 2 Answer and to the MISO Answer (IMEA Answer). On July 15, 2019, PJM filed a motion for leave to answer and answer to the Joint Rehearing Request (PJM July 15 Answer). On July 19, 2019, Complainants filed a joint motion for leave to answer and joint answer to the MISO Answer and to the PJM July 15 Answer (Joint Answer).

12. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure¹³ prohibits answers to a request for rehearing. Although Complainants have styled their pleading as a joint request for rehearing and clarification, and IMEA has styled its pleading as request for expedited clarification or rehearing, we consider these pleadings to be requests for rehearing.¹⁴ On that basis, we reject the PJM July 2 Answer, the MISO Answer, and the PJM July 15 Answer, as well as the IMEA Answer and the Joint Answer.

III. Substantive Matters

A. Allegations of MISO Tariff Violations

1. May 2019 Orders

13. The Commission found in three of the May 2019 Orders that the MISO Tariff authorizes MISO to assess congestion and losses charges to Tilton, AMP, and the Dynegy Companies for the transmission services provided to Complainants, and that MISO did not violate its Tariff by using Financial Schedules to do so.¹⁵

¹³ 18 C.F.R. § 385.713(d)(1) (2019).

¹⁴ *E.g.*, *Seminole Elec. Coop., Inc. v. Florida Power & Light Co.*, 153 FERC ¶ 61,037, at P 11 & n.16 (2015) (“creative nomenclature does not make [public comments] anything other than a request for rehearing”); *Stowers Gas and Oil Co.*, 27 FERC ¶ 61,001, at n.3 (1984) (“Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.”).

¹⁵ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 73; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 82; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 60.

14. The Commission noted that Tilton, AMP, and 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 their pseudo-tie transactions,¹⁶ and thus are required to pay the applicable charges set forth on Schedule 7 “in addition to other applicable charges specified in the [MISO] Tariff.”¹⁷ Further, the Commission explained that, while Schedule 7 does not specify what other MISO Tariff charges are applicable, other provisions in the MISO Tariff identify congestion and losses charges as applicable to all transmission service transactions, including those associated with pseudo-tie transactions.¹⁸

15. The Commission noted that, specifically, Attachment L (Credit Policy) of the MISO Tariff recognizes that all transmission service transactions are subject to the costs of congestion and losses.¹⁹ Moreover, the Commission noted that 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. The Commission explained that the fact that the MISO Tariff requires customers to pay these charges on redirects necessarily assumes that they are also paid on the original Receipt and Delivery Points. The Commission explained that 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 Transmission Usage Charge, i.e., the costs of congestion and losses to be assessed to buyers and sellers under Financial

¹⁶ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 70; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 79; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 58.

¹⁷ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 70; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 79; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 58 (quoting MISO Tariff, Schedule 7). In addition, in the Dynegy Companies Complaint Order, the Commission noted that 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. Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 58.

¹⁸ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 70; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 79; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 58.

¹⁹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 70; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 79; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 58 (all quoting MISO Tariff, Attachment L).

Schedules designated to be settled in the Real-Time Energy and Operating Reserve Market.²⁰

16. The Commission found that pseudo-tie transactions that utilize MISO's Transmission System result in real-time congestion costs on MISO's Transmission System that MISO properly settles through its real-time market.²¹ The Commission explained that, consistent with this finding, Section 2.7.3 of the Market Settlements Business Practice Manual (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]."²² The Commission further noted 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.²³ Thus, the Commission noted that 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.

17. The Commission recognized 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, the Commission explained that given that the MISO Tariff does not specify what settlement vehicle MISO must use to assess congestion charges on pseudo-tie transactions, and that such charges are settled in the real-time market, the Commission found it reasonable that MISO assigned Financial Schedules to the pseudo-tie transactions of Tilton, AMP and

²⁰ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 71; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 79; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 58 (all citing MISO Tariff, Module C, Section 40.4.2).

²¹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 72; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 80; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59.

²² Tilton Complaint Order, 167 FERC ¶ 61,147 at P 72; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 80; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59.

²³ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 72; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 80; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59.

the Dynegy Companies and assessed congestion costs via the Transmission Usage Charge.²⁴

2. Request for Rehearing

18. Complainants argue that the Commission erred when it determined that MISO's use of Financial Schedules and its associated imposition of Transmission Usage Charges on Complainants for their pseudo-tied resources did not amount to a Tariff violation.²⁵ Complainants contend that the Commission erroneously relied on general Tariff provisions which were not the basis upon which MISO assessed the disputed charges on Complainants.²⁶ Complainants argue that in finding that it was reasonable for MISO to use Financial Schedules as a settlement vehicle to assess congestion charges on pseudo-tied resources, the Commission improperly departed from statutory requirements and its previous precedent that MISO must obtain prior approval and cannot implement procedures of its choosing unilaterally.²⁷

19. Noting that the Commission found that overlapping charges were unjust and unreasonable from the refund effective dates forward, Complainants contend the duplication of charges over the same transmission path was just as unreasonable and inappropriate prior to the refund effective dates established in the May 2019 Orders.²⁸ Complainants contend that because MISO began implementing the practice of using Financial Schedules without the Commission's prior approval, the Commission was deprived of the opportunity to reject the practice at the outset. Complainants contend that because prior permission should have been asked but was not, the Commission should preclude the assessment of overlapping charges *ab initio*.²⁹ Complainants contend that the Commission's reliance on general Tariff provisions, such as Attachment L, Section 15.7, and Section 23.2 is misplaced. Complainants contend that these provisions

²⁴ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 72; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 80; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59.

²⁵ Joint Rehearing Request at 2, 8.

²⁶ *Id.* at 8.

²⁷ *Id.* at 9 (citations omitted).

²⁸ *Id.* at 11 (citation omitted).

²⁹ *Id.* at 11-15.

are just recitations of how things generally work and are not tantamount to granting MISO authority to assess charges the way it did.

20. Complainants contend that a Financial Schedule requires two parties, while only one party was present in the transactions at issue.³⁰ Complainants contend this precluded MISO from assessing charges in this manner, and that the Commission erred in relying on general Tariff permissions when the specific Tariff provision at issue does not permit MISO's conduct. Complainants note that the Commission recognized both that the MISO Tariff does not state that a Financial Schedule will be created for pseudo-tie transactions, and that it does say a Financial Schedule is between two market participants.³¹

21. Complainants state that they do not contest that they are subject to appropriate charges relating to congestion, losses and administrative fees, but that their complaints contested duplicative and overlapping fees.³² Complainants contend that, while the Commission stated that their transactions cause real-time congestion costs on MISO's Transmission System, the assessment of congestion charges must be effectuated through explicit Tariff provisions, not through after-the-fact reinterpretation of a piecemeal conglomeration of Tariff provisions.³³ Complainants allege that the Commission erred in failing to find that in the absence of specific authority to take an action, MISO has no authority to take such action.³⁴ Further, Complainants allege that the Commission erred in relying on the provisions of a MISO BPM, which is not approved by the Commission, and in giving weight to the time period over which MISO has employed Financial Schedules for pseudo-tied resources.³⁵

3. Commission Determination

22. We deny rehearing. We disagree with Complainants' contention that the Commission erred by finding that MISO had the authority to assess congestion and losses

³⁰ *Id.* at 10.

³¹ *Id.* at 8 (citing Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59; MISO Tariff, Module A, Section 1.F).

³² *Id.* at 11.

³³ *Id.*

³⁴ *Id.* at 13-15.

³⁵ *Id.* at 12-13.

charges to pseudo-tied customers in the absence of an explicit Tariff section that applied to the situation.

23. While Complainants argue that the Commission should not have relied on general Tariff provisions, they ignore that the Commission also found authority to assess the charges at issue in Schedule 7, which provides for the long-term firm point-to-point transmission service taken by Complainants, and states that the transmission customer is responsible for “other applicable charges specified in the [MISO] Tariff.” Attachment L states that all transmission service transactions are subject to congestion costs, and thus congestion charges are an “applicable charge” referred to in Schedule 7 of the Tariff.³⁶

24. We also reject Complainants’ argument that MISO was specifically precluded from using a Financial Schedule because it requires two parties. As the Commission stated in the May 2019 Orders, the “two parties” language in MISO’s Tariff does not preclude MISO from using Financial Schedules to assess charges on pseudo-tied Market Participants.³⁷ The Commission found that multiple sections of the MISO Tariff grant MISO the authority to assess charges on pseudo-tied Market Participants, and that MISO’s use of Financial Schedules was a reasonable exercise of the authority contained in those provisions. The Commission did not, as Complainants allege, “[rely] on general Tariff provisions when the specific Tariff provision at issue does not permit MISO’s conduct.”³⁸ Rather, the Commission explicitly found that the use of Financial Schedules was not prohibited by the specific Tariff provision at issue, i.e., Schedule 7.

25. Similarly, Complainants contend that the Commission erred by relying on provisions of the BPMs and by noting that the use of Financial Schedules was a long-standing business practice. We disagree. The Commission relied on the provisions of the Tariff, as discussed above, to find that MISO had authority to assess the congestion, administrative, and losses charges. The Commission did not rely on the BPM or historic usage to find that MISO had authority to assess these charges. As to the separate issue of how MISO settled such charges, the Commission cited the BPM and MISO’s long-standing practice to support its finding that it was reasonable for MISO to use a Financial

³⁶ See MISO Tariff, Schedule 7; see also MISO Tariff, Attachment L.

³⁷ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 72; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 80; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59.

³⁸ Joint Rehearing Request at 11.

Schedule as a settlement vehicle for MISO to assess congestion and other charges on pseudo-tie transactions via the Transmission Usage Charge.³⁹

26. Complainants assert that, because the Commission would not have permitted duplicative charges if asked to approve them before they were assessed, and because the Commission found that duplicative charges were not just and reasonable, the Commission should preclude them *ab initio*.⁴⁰ We disagree with the premise underlying Complainants' assertion. As discussed above, we have found that the MISO Tariff authorized MISO to assess congestion and other charges on pseudo-tied resources. The fact that the Commission has now determined that, as a result of inter-regional coordination of markets between MISO and PJM, in some circumstances MISO's charges potentially overlapped with or duplicated charges that PJM assessed, does not render all such MISO charges void as of the date they originally became effective.

B. Allegations of PJM Tariff Violations

1. May 2019 Orders

27. In the NIMPA/AMP Complaint Order, the Commission found that PJM's calculation of congestion charges from the source nodal point within the MISO Transmission System for pseudo-tied resources does not violate the PJM Tariff.⁴¹ The Commission further found 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, the Commission found that Complainants' reliance on Section 5.1.4 of Attachment K-Appendix as demonstrating a tariff violation is misplaced. The Commission noted that 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."⁴² The Commission found that the

³⁹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 72; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 80; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 59.

⁴⁰ Joint Rehearing Request at 11-12.

⁴¹ NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 46.

⁴² *Id.*

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.⁴³

28. Further, the Commission explained that even if only the Interface Pricing Point were acceptable, the PJM Tariff gives PJM latitude to define that point as appropriate.⁴⁴ The Commission noted that, 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 PJM Operating Agreement, which state that

PJM shall from time to time, as appropriate, define and revise Interface Pricing Points for purposes of calculating [locational marginal prices (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.*⁴⁵

29. Thus, the Commission concluded that PJM may determine the Interface Pricing Point by choosing a portion of an external balancing authority area such as MISO, and that the PJM Tariff permits PJM to define the Interface Pricing Point as the nodal point in MISO where NIMPA and AMP's pseudo-tied generation facility is located.⁴⁶ In addition, the Commission noted that a Balancing Authority Area is determined by a set of nodes external to the PJM system.⁴⁷ The Commission explained that the nodal prices of these nodes are aggregated to calculate the Interface Pricing Point. Therefore, the Commission found that PJM's current practice of calculating congestion costs based on the source point at NIMPA and AMP's generation facility is not inconsistent with the

⁴³ *Id.*

⁴⁴ *Id.* P 47.

⁴⁵ *Id.* (quoting PJM Tariff, Attachment K-Appendix, Section 2.6A) (emphasis added in NIMPA/AMP Complaint Order).

⁴⁶ *Id.* P 48.

⁴⁷ *Id.* (citing PJM Operating Agreement, Schedule 1, Section 2.6A(a) (Interface Prices)).

PJM Tariff requirement that PJM apply Interface Pricing Points to determine congestion charges applicable to generators pseudo-tied from MISO into PJM.⁴⁸

30. The Commission found that the language of the JOA indicates that the dispatch of resources in both markets will be performed under a nodal pricing regime.⁴⁹ The Commission noted that, 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 Commission found that AMP and NIMPA presented no arguments controverting this provision.⁵⁰

2. Request for Rehearing

31. Complainants allege that the Commission erred in not finding that PJM violated its Tariff when it calculated congestion charges using source nodal points within MISO. Complainants argue that Section 5.14 of the PJM Tariff demonstrates that PJM in fact does not have the discretion to assign nodal points in order to justify a practice that yields unjust, unreasonable, discriminatory results. Instead, Complainants contend that the more logical reading of the Tariff is that PJM is obligated to adhere to a methodology for setting pricing points that accounts for differences in the categories of market-to-market transactions.⁵¹ Complainants thus argue that PJM violated its Tariff by enforcing it improperly or unreasonably.

32. Complainants further contend the Commission ignored evidence suggesting that using the Interface Pricing Point to assess congestion costs is a best practice in the context of dynamic transfers.⁵² Complainants argue that the Commission's failure to

⁴⁸ *Id.*

⁴⁹ *Id.* P 49.

⁵⁰ *Id.*

⁵¹ Joint Rehearing Request at 49-50.

⁵² *Id.* at 47-48.

preclude PJM from using source nodal points to establish congestion pricing conflicts with the policy imperative to treat pseudo-ties as similarly as possible to dynamically scheduled interchange transactions.⁵³

3. Commission Determination

33. We deny rehearing, and affirm the determination in the NIMPA/AMP Complaint Order that PJM's calculation of congestion charges from the source nodal point within the MISO Transmission System for pseudo-tied resources does not violate the PJM Tariff. While Complainants contend that utilizing the MISO-PJM interface to assess congestion costs would be a better practice than using the source nodal point, the fact remains that the PJM Tariff explicitly gives PJM the authority to utilize either the source nodal point or the MISO-PJM interface.⁵⁴ Further, as explained above, even assuming that the use of the source nodal point resulted in Complainants being assessed overlapping or duplicative congestion charges, that does not demonstrate that PJM violated its Tariff.

C. Customers Eligible for Refunds

1. May 2019 Orders

34. As noted above,⁵⁵ the Commission granted the MISO/PJM Pseudo-Tie Congestion Complaints in part, finding that, to the extent Complainants were assessed overlapping or duplicative congestion charges by the RTOs, such charges were unjust and unreasonable.⁵⁶ The Commission found that determining what refunds are appropriate to remedy the overlapping or duplicative congestion charges to Complainants raises issues of material fact that cannot be resolved based on the then-existing record, and that are

⁵³ *Id.* at 52 (citing Phase 1 Order, 164 FERC ¶ 61,069 at P 49).

⁵⁴ PJM Tariff, Section 15.4.

⁵⁵ *See supra* P 10.

⁵⁶ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 84; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 94; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 67; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 52 (all citing *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”)).

more appropriately addressed in the ordered hearing and settlement judge procedures.⁵⁷ The Commission explained that, because of the existence of common issues of law and fact regarding the extent to which Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds, the Commission consolidated the MISO/PJM Pseudo-Tie Congestion Complaint proceedings for purposes of settlement, hearing, and decision.⁵⁸

2. Request for Rehearing

35. IMEA contends that the Commission erred in limiting the potentially available refunds for the unjust and unreasonable overlapping and duplicative congestion charges only to Complainants.⁵⁹ IMEA asserts that the language of section 206 of the FPA authorizes class-wide relief.⁶⁰ IMEA notes that where the Commission finds a rate to be unjust and unreasonable under section 206 of the FPA, section 206(b) directs that “refunds shall be made, with interest, to those *persons* who have paid those rates or charges which are the subject of the proceeding.”⁶¹ IMEA argues that the statutory use of the word “persons” reflects an intent to provide relief to everyone affected by the unjust and unreasonable charges, and that excluding IMEA and other similarly-situated customers violates FPA section 206(b).⁶²

36. IMEA requests that the Commission clarify that any refunds must go to the entire class of “affected customers” (“persons”) that paid the overlapping or duplicative congestion charges between MISO and PJM, and not just to Complainants.⁶³ IMEA argues that it would be inequitable and an abuse of discretion for the Commission to

⁵⁷ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 85; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 95; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 68; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 53.

⁵⁸ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 85; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 95; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 68; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 53.

⁵⁹ IMEA Rehearing Request at 8.

⁶⁰ *Id.* at 3, 12 (referencing 16 U.S.C. § 824e(b) (2018)).

⁶¹ *Id.* at 2-3 (emphasis added by IMEA).

⁶² *Id.* at 8.

⁶³ *E.g., id.* at 3, 8, 11.

award refunds only to Complainants.⁶⁴ IMEA asserts that the Commission has repeatedly recognized that entities that have paid unjust and unreasonable charges are entitled to refunds even though they did not themselves file a complaint.⁶⁵

37. Finally, IMEA argues that all affected pseudo-tied entities that paid any overlapping or duplicative congestion charges between MISO and PJM should receive refunds beginning with the refund effective date of the Tilton Complaint proceeding.⁶⁶ IMEA asserts that to provide other refund effective dates would negate the language of section 206, which, according to IMEA, provides for uniform, class-wide relief.

3. Commission Determination

38. We deny rehearing. For the reasons discussed below, we find that only Complainants are entitled to refunds in these proceedings.

39. The Commission has held that “allowing a third party to join in a complaint by filing comments would circumvent our public notice requirements and deprive the ‘respondent’ of the opportunity to address the assertions of that third party.”⁶⁷ The

⁶⁴ *Id.* at 11.

⁶⁵ *Id.* at 9 (citing *Golden Spread Elec. Coop. v. Sw. Pub. Serv. Co.*, 123 FERC ¶ 61,047, at P 201 (2008) (*Golden Spread*) (“When the same customer class and the same rates are at issue, a separate complaint is not required for refunds to apply to all customers served under that rate.”); *City of Holland, Mich. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 112 FERC ¶ 61,105 (2005) (*City of Holland*) (denying MISO’s request for rehearing asking the Commission to require it to provide refunds only to complainants and intervenors, stating that it would be “inequitable to require Midwest ISO to provide a remedy to only four of its customers, when potentially many other customers were also impacted by its violation of the filed rate doctrine”); *Ass’n of Bus. Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 156 FERC ¶ 61,234, at P 129 (2016) (*ABATE*) (where all customers, including IMEA (which did not file a complaint) received refunds in a case challenging the rate of return in formula transmission rates of the MISO Transmission Owners).

⁶⁶ *Id.* at 12.

⁶⁷ *Interstate Power and Light Co. v. ITC Midwest, LLC*, 127 FERC ¶ 61,043, at P 47 (2009), *reh’g denied*, 135 FERC ¶ 61,162 (2011) (citing 18 C.F.R. § 385.206 (2019)); *see also ConocoPhillips Co. v. Entergy Servs., Inc.*, 124 FERC ¶ 61,085, at P 31 (2008), *reh’g denied*, 129 FERC ¶ 61,243 (2009) (citation omitted); *La. Pub. Serv. Comm’n v. Entergy Corp.*, 138 FERC ¶ 61,029, at P 42 (2012) (citation omitted).

Commission has also explained that if a third party “seeks Commission action for a perceived violation against it, it is free to file its own complaint alleging each violation, presenting facts in support, and requesting specific relief.”⁶⁸ Here, because of the fact-specific nature of how a pseudo-tie transaction may result in overlapping or duplicative charges, we affirm that each customer must file its own complaint to set forth the specific characteristics applicable to its pseudo-tie transactions.

40. The determination of whether a specific customer with a pseudo-tied resource was subject to overlapping or duplicative charges must be made on a case-by-case basis and may be based on considerations such as the location of the pseudo-tied customer’s generating unit(s) on the system, the transaction sink points, loads on the system at any given time, dispatch schedules, and the generator’s applicable shift factors. Reflecting this fact-specific nature, in the underlying orders, the Commission found that a pseudo-tied resource would have to have been dispatched and impacted by a binding Reciprocally Coordinated Flowgate in order to have been subject to overlapping or duplicative congestion charges.⁶⁹ Accordingly, in such circumstances, IMEA and other pseudo-tied customers who believed they are subject to overlapping or duplicative congestion charges are required to file their own complaints and plead the facts of their own cases to be entitled to relief.

41. We find that IMEA’s reliance on the *Golden Spread* and *ABATE* cases is misplaced. The *Golden Spread* and *ABATE* cases involved Commission-directed changes to the tariff rates for service to any customer in a defined service class.⁷⁰ Here, each Complainant, IMEA, and any other customers with pseudo-tied resources have not been shown to be part of a similarly-situated customer class with respect to the assessment of congestion charges. Complainants, IMEA, and other customers with pseudo-tied resources pay charges applicable to their specific transactions under various rate schedules of two different transmission providers. Further, the record evidence in this proceeding does not show that either MISO or PJM groups customers with pseudo-tied resources together when establishing rates. Thus, as noted above, determining which customers with pseudo-tied resources are subject to overlapping or duplicative congestion

⁶⁸ *Interstate Power and Light Co. v. ITC Midwest, LLC*, 127 FERC ¶ 61,043 at P 47 (citing 18 C.F.R. § 385.206); *see also ConocoPhillips Co. v. Entergy Servs., Inc.*, 124 FERC ¶ 61,085 at P 31 (citation omitted); *La. Pub. Serv. Comm’n v. Entergy Corp.*, 138 FERC ¶ 61,029 at P 42 (citation omitted).

⁶⁹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 84; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 94; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 67; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 52; *see also* MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 3.

⁷⁰ *Golden Spread*, 123 FERC ¶ 61,047; *ABATE*, 156 FERC ¶ 61,234.

charges is a customer-specific inquiry. For these reasons, we find that there is not a pseudo-tie customer class for purposes of the claims at issue in the MISO/PJM Pseudo-Tie Congestion Complaints.

42. Because there is not a pseudo-tie customer class, we reject IMEA's argument that section 206(b) of the FPA requires that refunds go to all pseudo-tied customers that might potentially have been subject to overlapping or duplicative pseudo-tie congestion charges between MISO and PJM. Here, the consolidated MISO/PJM Pseudo-Tie Congestion Complaints involve charges paid only by Complainants, and not by IMEA or other customers with pseudo-tied resources who did not file complaints. Accordingly, given the absence of a pseudo-tie customer class, it has not been shown that IMEA and other non-Complainant pseudo-tied customers paid "those rates or charges which are the subject of [these] proceeding[s],"⁷¹ and they are thus not entitled to refunds under this provision.

43. We also find IMEA's reliance on *City of Holland* to be misplaced.⁷² There, the Commission determined that MISO had violated its Tariff regarding the charges it assessed for redirect service and explained:

[I]t would be inequitable to require [MISO] to provide a remedy to only four of its customers, when potentially many other customers were also impacted by its violation of the filed rate doctrine.⁷³

By contrast, as discussed above,⁷⁴ here the Commission has found that MISO and PJM's assessment of congestion charges did not violate their respective filed rates.

44. Finally, given that we have not found there to be a pseudo-tie customer class with respect to congestion charges, we deny IMEA's request to set a class-wide refund effective date.

⁷¹ 16 U.S.C. § 824e(b).

⁷² *City of Holland*, 112 FERC ¶ 61,105.

⁷³ *Id.* P 11.

⁷⁴ *See supra* sections III.A and III.B.

D. Refund Periods

1. May 2019 Orders

45. Consistent with the Commission's general policy of providing maximum protection to customers,⁷⁵ the Commission set the refund effective date for each MISO/PJM Pseudo-Tie Congestion Complaint at the earliest date possible, i.e., the date that each respective complaint was filed.⁷⁶ The Commission noted that section 206(b) of the FPA permits the Commission to order refunds for a 15-month refund period following the refund effective date.⁷⁷

2. Request for Rehearing

46. Complainants contend that, even if the Commission were to find that the RTOs did not violate their Tariffs, the Commission should determine that the circumstances in these proceedings warrant a refund period that extends until the unjust and unreasonable overcharges are eliminated, even if that period exceeds 15 months.⁷⁸ Complainants argue that the Commission should clarify that it did not rule on the refund end date and that the refund end date is commensurate with the date all overcharges cease.⁷⁹ Alternatively, Complainants assert that the Commission erred in failing to find that the refund effective period is coterminous with the date that the overcharges cease.⁸⁰ Complainants note that under section 206(b) of the FPA, if a proceeding is not resolved within the 15-month refund period primarily due to the dilatory behavior by the public utility, the Commission

⁷⁵ 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).

⁷⁶ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 87; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 97; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 70; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 55.

⁷⁷ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 87; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 97; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 70; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 55.

⁷⁸ Joint Rehearing Request at 2, 17.

⁷⁹ *Id.* at 61.

⁸⁰ *Id.* at 3, 27.

may extend the refund period beyond the 15-month statutory timeframe.⁸¹ Complainants allege that the record contains extensive evidence of the RTOs' dilatory behavior and that the Commission's failure to address this evidence constitutes legal error.⁸²

47. Specifically, Complainants argue that the RTOs did not prioritize resolving the overlapping congestion charges despite the financial harm being visited upon Complainants and publicly recognizing the existence of a problem requiring resolution.⁸³ Complainants note the RTOs had sought to hold resolution of the MISO/PJM Pseudo-Tie Congestion Complaints in abeyance and had filed status reports claiming that the issues raised in the MISO/PJM Pseudo-Tie Congestion Complaints were being resolved in the stakeholder process.⁸⁴ Complainants argue that the RTOs' claims that these issues were being resolved through the stakeholder process were not true.⁸⁵ Complainants assert that the stakeholder process that gave rise to the Phase 1 and Phase 2 Revisions did not address all of the issues raised in the MISO/PJM Pseudo-Tie Congestion Complaints—including the period between the onset of the congestion charges and the dates the Complaints were filed, or the period between the filing of the Complaints and the effective date of Tariff changes. Further, Complainants argue that the process dragged on for over two years. Complainants also fault MISO for failing to provide rebates or other mechanism to address overlapping or congestion charges in the MISO Phase 2 Revisions.⁸⁶

48. In addition, Complainants contend that equitable considerations support an extended refund period in these proceedings.⁸⁷ Complainants assert that the Commission has broad remedial authority under section 309 of the FPA, and they argue that making

⁸¹ *Id.* at 18; *see also id.* at 61 (both citing 16 U.S.C. § 824e(b)).

⁸² *Id.* at 18.

⁸³ *Id.* at 26.

⁸⁴ *Id.* at 19-21.

⁸⁵ *Id.* at 20-21.

⁸⁶ This argument will be addressed in *infra* section III.E.

⁸⁷ Joint Rehearing Request at 33; *see also id.* at 61 (citations omitted).

Complainants whole requires refunds from the refund effective date until the overlapping congestion charges cease being assessed.⁸⁸

49. Complainants further argue that the MISO Tariff allows refunds from the applicable refund effective dates through the date that the overcharges are eliminated.⁸⁹ Complainants assert that, under the MISO Tariff language effective when the Complaints were filed, MISO had resolved errors over multiple years by resettling almost as far back as market start. Complainants contend that because their claims preceded changes to the Tariff that have since disallowed this, they are entitled to refunds for the full extent of duplicative charges imposed upon them prior to the change. Complainants further argue that the Tariff has since been updated to allow a refund window of two years, and thus the window for relief extends to November 1, 2020, two years from the effective date of those changes.⁹⁰

50. Similarly, Complainants argue that Section 10.4 of the PJM Tariff and Section 15.6 of the PJM Operating Agreement allow for refunds to be collected up to two years prior to the date of a claim for billing adjustment, and extending after the claim is made until the issue is resolved. Thus, Complainants contend that they are entitled to refunds for the full extent of all duplicative charges imposed upon them.⁹¹

3. Commission Determination

51. We deny rehearing. We disagree with Complainants that the refund period should be coterminous with the date that the overcharges cease. Specifically, we find that Complainants have not demonstrated that the RTOs have engaged in dilatory behavior warranting us to extend the 15-month refund period.

52. The efforts that the RTOs have made to resolve the congestion overlap issue belie Complainants' claims of dilatory behavior that affected resolution of the MISO/PJM Pseudo-Tie Congestion Complaints. On January 25, 2017, approximately five months after the earliest of the MISO/PJM Pseudo-Tie Congestion Complaints was filed, the RTOs filed a joint motion to hold in abeyance the complaint proceedings in Docket Nos. EL16-108-000, EL17-29-000, EL17-31-000, and EL17-37-000 citing their intent to

⁸⁸ *Id.* at 33.

⁸⁹ *Id.* at 29.

⁹⁰ *Id.* at 28-30 (citing, *inter alia*, MISO Tariff, Module A, Section 12A(c)-(e)).

⁹¹ *Id.* at 30-32.

develop a methodology to resolve the congestion overlap issue related to pseudo-ties.⁹² The RTOs engaged in efforts to develop a solution with their stakeholders and provided the Commission with status updates on their progress approximately every 60 days through April 6, 2018.⁹³

53. Within nine months of filing their abeyance motion, the RTOs filed their Phase 1 Revisions on October 23, 2017, as amended January 29, 2018 and May 31, 2018. As noted above, the Commission accepted the Phase 1 Revisions, effective August 1, 2018, finding 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.”⁹⁴ Further, on June 1, 2018, PJM submitted its Phase 2 Revisions, which the Commission accepted effective August 1, 2018, finding that it addressed concerns about the potential for congestion charge overlap.⁹⁵ Ultimately, in the MISO Phase 2 Order, the Commission found that the RTOs had demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions eliminated the congestion charge overlap.⁹⁶

54. Based on the foregoing, we find that the RTOs demonstrated a good faith effort to resolve through Tariff and JOA revisions the overlapping congestion charge issue raised by the MISO/PJM Pseudo-Tie Congestion Complaints. We disagree that any of the shortcomings alleged by the Complainants to have existed in the Phase 1 and 2 Revisions process demonstrate behavior that had the intent or effect of delaying a resolution of the issues raised in the MISO/PJM Pseudo-Tie Congestion Complaints. Further, given the highly technical nature of the issue and the need to coordinate between the RTOs and

⁹² The Dynegy Companies Complaint in Docket No. EL17-54-000 was filed on March 28, 2017, after the RTOs had filed the abeyance motion and after the RTOs filed their first status update. However, the RTOs filed subsequent status reports in Docket No. EL17-54-000 as well.

⁹³ Tilton Complaint Order, 167 FERC ¶ 61,147 at PP 18-19; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at PP 22-23; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 23; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at PP 24-25.

⁹⁴ Phase 1 Order, 164 FERC ¶ 61,069 at P 22.

⁹⁵ PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 17.

⁹⁶ MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61.

their respective stakeholders, it does not appear that the amount of time that passed for development of the Phase 1 and Phase 2 Revisions was due to dilatory behavior.

55. In addition, contrary to Complainants' assertions, the MISO Tariff does not permit the extension of refund relief beyond the 15-month refund period. The MISO Tariff was revised in November 2018 to include time bar revisions "to establish certain categorical time limits for the initiation of market and transmission settlement disputes . . . and any associated adjustments and corrections to settlement statements."⁹⁷ These "categorical time limits" are set forth in Sections 12A(c) and (d) of the MISO Tariff:

(c) The Transmission Provider may not adjust any billing, invoice or settlement statement with respect to any Transmission Service under the Tariff if more than two (2) years have elapsed since the date on which the official invoice for the Transmission Service was first issued after the effective date of section 12A, provided that the Transmission Provider shall make the appropriate adjustments up to such two-year period in cases involving a Continuing Error of the Transmission Provider in accordance with section 12A(e).

(d) The Transmission Provider may not adjust any settlement statement with respect to any Market Activity, if more than two (2) years have elapsed since the Operating Day that service occurred after the effective date of section 12A, provided that the Transmission Provider shall make the appropriate adjustments up to such two-year period in cases involving a Continuing Error of the Transmission Provider in accordance with section 12A(e).

56. Complainants incorrectly claim that Section 12A authorizes MISO to provide an additional two years of relief for any overlapping or duplicative congestion charges between November 1, 2018 and November 1, 2020. These provisions do not pertain to refunds ordered by the Commission under FPA section 206. Rather, they relate to billing errors or incorrect applications of existing Tariff provisions—that is, deviations from MISO's filed rate. Because the refunds at issue in these proceedings do not relate to billing errors or incorrect application of the Tariff, the language of these provisions provides no authority for extending the 15-month refund period.

57. Complainants also incorrectly claim that because the MISO/PJM Pseudo-Tie Congestion Complaints were filed prior to when the time bar revisions described above became effective on November 1, 2018, the MISO Tariff permitted refunds to match the

⁹⁷ *Midcontinent Indep. Sys. Operator, Inc.*, 165 FERC ¶ 61,065, at P 1 (2018).

duration of any overcharges without limitation. Complainants again confuse MISO's correction of errors in the implementation of the filed rate with the requirement that MISO provide refunds ordered by the Commission for certain unjust and unreasonable charges under section 206.

58. Similarly, contrary to Complainants' arguments, the PJM Tariff does not permit the extension of refund relief beyond the 15-month refund period. Complainants cite to time bar provisions in Section 10.4 of the PJM Tariff, in effect until December 22, 2017, which limited adjustments in the billing for a service, transaction or charge if more than two years had elapsed since the billing occurred. Complainants also cite to Section 15.6 of the PJM Operating Agreement, which uses virtually identical language to set a two-year time limit on past billing adjustments.⁹⁸ As with MISO's time bar revisions described above, these provisions do not pertain to refunds ordered by the Commission under section 206(b). Rather, the provisions limit PJM's liability for adjustments in past billings that deviated from PJM's filed rate.

59. Further, having found that extending the 15-month refund period is not appropriate under the circumstances of these proceedings, we need not address Complainants' contention that the Commission could rely upon its authority under FPA section 309 to do so.

E. Elimination of Congestion Overlap

1. May 2019 Orders

60. In each of the May 2019 Orders, the Commission found that the potential for overlapping or duplicative charges for congestion existed prior to the effective dates of the Phase 1 and Phase 2 Revisions.⁹⁹ The Commission noted that the RTOs had stated, and no party disputed, that there was a potential for such overlapping or duplicative congestion charges in certain circumstances, specifically, when, under the market-to-

⁹⁸ PJM Operating Agreement, Section 15.6 (Limitation on Claims).

⁹⁹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 84; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 94; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 67; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 52.

market process, a Reciprocally Coordinated Flowgate under the JOA simultaneously binds in both the MISO and PJM markets.¹⁰⁰

61. The Commission explained that 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.¹⁰¹ The Commission noted that, 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. The Commission explained that, in this instance, both the Native Balancing Authority and the Attaining Balancing Authority assessed congestion from the pseudo-tied resource to the interface.¹⁰²

62. The Commission noted that it had accepted the RTOs' Phase 1 and Phase 2 Revisions to address on a prospective basis concerns regarding such overlapping or duplicative congestion charges.¹⁰³ Further, the Commission noted that the MISO Phase 2 Order found that the RTOs had demonstrated that the Phase 1 Revisions and the PJM Phase 2 Revisions had eliminated the congestion overlap.¹⁰⁴ Thus, the Commission

¹⁰⁰ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 84; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 94; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 67; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 52.

¹⁰¹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 84 n.114; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 94 n.127; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 67 n.106; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 52 n.65 (all citing, *inter alia*, Phase 1 Order, 164 FERC ¶ 61,069 at P 4).

¹⁰² Tilton Complaint Order, 167 FERC ¶ 61,147 at P 84 n.114; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 94 n.127; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 67 n.106; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 52 n.65 (all citing, *inter alia*, Phase 1 Order, 164 FERC ¶ 61,069 at P 4).

¹⁰³ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 83; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 93; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 66; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 51.

¹⁰⁴ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 83 n.112; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 93 n.125; Dynegy Companies Complaint

found that the JOA and other sections of the MISO Tariff and the PJM Tariff were just and reasonable, and the Commission did not require MISO and PJM to make further Tariff revisions.

2. Request for Rehearing

63. Complainants argue that the Commission erred in failing adequately to justify its conclusion that the revisions accepted by the Phase 1 Order and the Phase 2 Orders fully eliminated the overlapping congestion charges.¹⁰⁵ Complainants argue that the Commission erred in imposing its findings in those orders in these proceedings when those findings, according to Complainants, are inconsistent with the evidence adduced in the MISO/PJM Pseudo-Tie Congestion Complaints. Complainants contend that implementation of the Phase 1 and Phase 2 Revisions may have reduced the duplicative congestion charges but have not eliminated them. Complainants assert that the Commission should set for hearing the issue of whether and why certain overlapping congestion charges have continued to be assessed following implementation of the Phase 1 and Phase 2 Revisions, arguing that there is still a going-forward problem that requires resolution.¹⁰⁶ Complainants argue that the same unresolved issues of material fact that existed prior to the Commission's acceptance of the Phase 1 and Phase 2 Revisions still exist today.¹⁰⁷

64. Complainants assert that the record evidence supports a finding that overlapping congestion charges result from circumstances beyond Reciprocally Coordinated Flowgates simultaneously binding in both RTOs.¹⁰⁸ Complainants argue that they have presented evidence of the existence of overlapping congestion charges that occur because both RTOs assess congestion over the same path, with MISO charging for congestion from the pseudo-tied resources to the MISO-PJM interface and PJM charging for congestion from the pseudo-tied resources to a point internal to PJM. Complainants assert that these congestion charges are assessed regardless of whether Reciprocally Coordinated Flowgates are simultaneously binding.

Order, 167 FERC ¶ 61,150 at P 66 n.104; NIMPA/AMP Complaint Order, 167 FERC ¶ 61,149 at P 51 n.63 (all citing MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 59, 61).

¹⁰⁵ Joint Rehearing Request at 34.

¹⁰⁶ *Id.* at 35; *see also id.* at 38.

¹⁰⁷ *Id.* at 46-47.

¹⁰⁸ *Id.* at 35.

65. Complainants argue that the Commission erred in failing to substantively address the evidence of overlapping congestion charges occurring regularly and not just when Reciprocally Coordinated Flowgates simultaneously bind.¹⁰⁹ Complainants assert, for example, that the AMP-PJM Complaint described the root cause of overlapping congestion charges being that “both MISO and PJM assess and collect transmission congestion charges for the transmission ‘leg’ between [AMP’s pseudo-tied resource in MISO] and to the MISO/PJM interface.”¹¹⁰ Complainants note that AMP stated in the AMP-PJM Complaint that “PJM currently settles congestion charges for generation pseudo-tied from MISO into PJM using congestion calculated between a source node on the MISO [T]ransmission [S]ystem and a delivery node on the PJM [T]ransmission [S]ystem.”¹¹¹ Complainants further note that AMP alleged that this practice, combined with MISO’s assessment of congestion charges for the same segment, results in overlapping charges.

66. Complainants argue that in the AMP-PJM Complaint, AMP raised PJM’s own description of certain overcharges for congestion that PJM “referred to as the ‘double-counting’ concern, . . . caused by the fact that the PJM interface definition for MISO was located inside the MISO system instead of right at the border between the RTOs” in support of this allegation.¹¹² Complainants noted that AMP presented documentation showing that the RTOs were considering applying pricing points closer to the MISO-PJM interface for pseudo-tied transactions, as PJM had done for scheduled imports, in order to resolve the double counting. Further, Complainants note that PJM admitted in its answer to the AMP-PJM Complaint that the RTOs were considering applying pricing points closer to the MISO-PJM interface in stakeholder discussions regarding pseudo-tie implementation.¹¹³

67. Specifically, Complainants describe how AMP estimated in the AMP-PJM Complaint the amount of overlapping congestion charges assessed by PJM:

¹⁰⁹ *Id.* at 37.

¹¹⁰ *Id.* at 35-36 (quoting AMP-PJM Complaint at 7).

¹¹¹ *Id.* at 36 (quoting AMP-PJM Complaint at 9).

¹¹² *Id.* (quoting AMP-PJM Complaint at 10 (quoting PJM Jun. 15, 2015 Reply Comments, Docket No. AD14-3-000, Attachment 1, Interface Pricing Issue – PJM Position Paper at 6 (PJM Position Paper))).

¹¹³ *Id.* at 36-37 & n.114 (citation omitted).

[AMP] compar[ed] the congestion component of both the real-time and day-ahead PJM LMP for the [MISO-PJM] Interface Pricing Points to PJM's 'fabricated' LMP for the [Prairie State Energy Campus (Prairie State)], injection point. AMP subtracted the Prairie State LMP from the Interface Pricing Points to determine the difference in the congestion value between these points for each hour.¹¹⁴

Complainants argue that this value corresponds with congestion on the MISO Transmission System that is collected by PJM. Complainants assert that they each alleged that PJM collects these amounts in addition to the congestion charges that MISO assesses for the same segment.

68. Complainants argue that there is insufficient record evidence in these consolidated dockets to support the claim that the overlapping charges are limited to the narrow circumstances of Reciprocally Coordinated Flowgates simultaneously binding.¹¹⁵ Complainants argue that although the RTOs made such allegations, the RTOs lack evidentiary support sufficient for the Commission to rely on them as the basis for its decision in these proceedings. Complainants argue that, as opposed to being infrequent and rare as the RTOs indicate, the duplicative congestion charges happen frequently and impact most hours observed.

69. Further, Complainants argue that the Commission erred in determining that the Phase 1 Order and the Phase 2 Orders eliminated the duplicative charges.¹¹⁶ Complainants note that the RTOs' proposals were directed at overlapping congestion charges that occurred when the RTOs engage in congestion management activities on Reciprocally Coordinated Flowgates binding in both RTOs pursuant to their JOA. Complainants assert that the RTOs' Phase 1 and Phase 2 Revisions did not address any overlapping congestion resulting from the broader fact that, according to Complainants, pseudo-tied generators are exposed to all congestion charges imposed by the RTOs on overlapping transmission paths of all kinds at all times.

70. Complainants argue that the Phase 1 Revisions and PJM Phase 2 Revisions did not fully resolve the congestion overlap.¹¹⁷ Complainants note that the Commission issued

¹¹⁴ *Id.* at 37 (quoting AMP-PJM Complaint at 15) (further citations omitted).

¹¹⁵ *Id.* at 35-40.

¹¹⁶ *Id.* at 39.

¹¹⁷ *Id.* at 40-43.

the Phase 1 Order concurrent with the PJM Phase 2 Order and that, when the Commission issued these orders, MISO had not yet filed its Phase 2 Revisions. Complaints note that in the Phase 1 Order, the Commission required MISO to make informational filings “every 30 days . . . detailing its progress toward a solution for *the remainder of the overlapping congestion charges*.”¹¹⁸ Complainants argue that the Commission also explained that rebates were amounts to be returned to the pseudo-tie generator “by the appropriate RTO via a yet to be proposed mechanism(s) outside of any congestion charges covered by [Financial Transmission Rights] (the Phase 2 [F]ilings).”¹¹⁹ Complainants argue that the Commission therefore acknowledged that the RTOs’ Phase 1 Revisions, even in combination with the PJM Phase 2 Revisions, did not fully resolve the overlapping congestion charges.

71. In addition, Complainants note that the Commission recounted in the PJM Phase 2 Order that both RTOs were expected to revise their respective Tariffs to provide rebates to remove the overlapping charges.¹²⁰ Complainants argue that, by this time, only PJM had sought to eliminate some of the charges. Complainants assert that thus, the PJM Phase 2 Order did not eliminate all the overlapping charges.

72. Further, Complainants assert that the MISO Phase 2 Revisions failed to provide the promised rebates and credits and made no changes that mitigate overlapping congestion charges assessed against pseudo-tied generators.¹²¹ Complainants note that the MISO Phase 2 Order stated that “[t]he RTOs [had] explained that the Phase 2 Revisions would address the remaining issues through the RTOs’ individual [T]ariffs and system changes, which required additional time and investment of resources to implement, and *would specify and clarify charges and credits due to pseudo-tie transactions*.”¹²² Complainants note that although the Commission acknowledged that “the appropriate RTO” should provide rebates, the Commission did not find that the only appropriate RTO to do so was PJM.¹²³ Further, Complainants argue that MISO’s

¹¹⁸ *Id.* at 41-42 (quoting Phase 1 Order, 164 FERC ¶ 61,069 at P 46) (emphasis added by Complainants).

¹¹⁹ *Id.* at 41 (quoting Phase 1 Order, 164 FERC ¶ 61,069 at P 7 n.17).

¹²⁰ *Id.* at 42 (citing PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 6).

¹²¹ *Id.* at 43.

¹²² *Id.* (quoting MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 6) (emphasis by Complainants).

¹²³ *Id.* (quoting Phase 1 Order, 164 FERC ¶ 61,069 at P 7 n.17).

reference in the MISO Phase 2 Revisions proceeding to “certain rebates” by PJM, as a result of the acceptance of the PJM Phase 2 Revisions, demonstrates that the rebates are not comprehensive. Complainants argue that because the MISO Phase 2 Revisions did not provide for any sort of rebates or credits that would apply to pseudo-tie transactions, a MISO Phase 3 filing is needed to fully resolve the congestion overlap.

73. Complainants assert that the Commission erroneously concluded in the MISO Phase 2 Order that overlapping congestion charges have been fully eliminated and that the May 2019 Orders improperly incorporate by reference this finding.¹²⁴ Complainants argue that the Phase 2 Order accepted the RTOs’ representations that the Phase 1 and Phase 2 Revisions eliminated the overlapping congestion charges and erroneously indicated that no contrary evidence had been presented. Complainants argue that the Commission errs in imposing findings of the Phase 1 and Phase 2 Orders on Complainants without justifying those findings based upon the record evidence in the Complaint proceedings.

74. Finally, Complainants note that the Commission’s decision in its MISO Phase 2 Order is subject to rehearing and that the same arguments made in the pending rehearing request apply in these proceedings. Complainants assert that, in particular, the Commission had previously determined that fully eliminating the overlapping congestion charges on a going forward basis would require MISO to establish a rebate mechanism, and they note that MISO failed to establish such rebate mechanism.¹²⁵

3. Commission Determination

75. We deny rehearing of the determinations in the May 2019 Orders that the RTOs’ Phase 1 Revisions and the PJM Phase 2 Revisions eliminated the overlapping charges for congestion, and that the currently effective provisions of the JOA and RTO Tariffs are just and reasonable.

76. As an initial matter, although Complainants assert on rehearing that overlapping or duplicative congestion charges occur in circumstances beyond when Reciprocally Coordinated Flowgates bind simultaneously and that such duplication or overlap occurs frequently and during most hours, such assertions are largely contradicted by the

¹²⁴ *Id.* at 45-46.

¹²⁵ *Id.* at 43, 46 & n.144 (quoting PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 6) (“The RTOs explained that the Phase 2 Revisions would require them to modify their respective [T]ariffs to make rebates available for the deviations from day-ahead commitments and these rebates would remove the remainder of the overlapping congestion charges not accounted for with the Phase 1 Revisions.”).

allegations made and evidence presented in the MISO/PJM Pseudo-Tie Congestion Complaints. For example, Tilton stated in its complaint:

MISO and PJM have been aware of, and discussed at [Joint and Common Market Stakeholder (JCM)] meetings, the potential that generation pseudo-tied from MISO to PJM may be assessed duplicative congestion costs when market-to-market constraints bind simultaneously in both markets.¹²⁶

Tilton further stated:

When market-to-market constraints bind simultaneously in both MISO and PJM, generators such as Tilton that are pseudo-tied out of [MISO to PJM] can be charged twice for the same congestion.¹²⁷

77. Additionally, to support the argument that the RTOs had assessed them overlapping or duplicative charges, AMP, Dynegy, and NIMPA all cited in their complaints to the RTOs' August 23, 2016 JCM presentation that addressed pseudo-ties (JCM Presentation).¹²⁸ MISO also included the JCM Presentation as an exhibit in its Answer to the Tilton Complaint.¹²⁹ The JCM Presentation stated that “[t]he congestion cost overlap only occurs when an associated [market-to-market] constraint binds in both markets.”¹³⁰ Further, the presentation stated that “[o]ften there is no congestion overlap since the issue is limited to [market-to-market] constraints and its associated congestion contribution between the source and interface.”¹³¹ In the MISO/PJM Pseudo-Tie Congestion Complaints—including the AMP-PJM Complaint to which Complainants

¹²⁶ Tilton Complaint at 32.

¹²⁷ *Id.*

¹²⁸ AMP-MISO Complaint at n.12 & Ex. M; NIMPA Complaint at 7; AMP-PJM Complaint at Ex. AMP-3; Dynegy Companies Complaint at 6 (all citing JCM Presentation, Item 4 – Pseudo-Ties, <https://www.miso-pjm.com/-/media/committees-groups/stakeholder-meetings/pjm-miso-joint-common/20160823/20160823-item-04-pseudo-tie-update.ashx?la=en>).

¹²⁹ See MISO Answer, Docket No. EL16-108-000, Attachment A, Ex. 1.

¹³⁰ *E.g.*, AMP-PJM Complaint, Ex. AMP-3 at 15.

¹³¹ *Id.* at 16.

refer extensively in their Rehearing Request on this issue—none of the Complainants attempted to refute these statements from the JCM Presentation that the overlap “only occurs” when a constraint binds in both markets.

78. We disagree with Complainants that the record evidence supports a finding that overlapping congestion charges result from circumstances beyond Reciprocally Coordinated Flowgates simultaneously binding in both RTOs. Indeed, Complainants have pointed to no evidence on the record to support this claim. Of the four Complainants, only AMP argued that the scope of the overlap extended beyond when Reciprocally Coordinated Flowgates bind simultaneously,¹³² asserting that duplicative non-market-to-market congestion costs may be included in MISO and PJM’s congestion charges as well, but AMP did not elaborate on this issue.¹³³ Further, AMP did not make this argument in the AMP-PJM Complaint.

79. In support of their claim that there is evidence that overlapping congestion charges result from circumstances beyond Reciprocally Coordinated Flowgates simultaneously binding, Complainants note in the Joint Rehearing Request that AMP presented in its complaint against PJM a PJM Position Paper showing that the RTOs considered applying Interface Pricing Points closer to the MISO-PJM interface for pseudo-tied transactions. We note that AMP also cited to the PJM Position Paper in its answer to MISO in the AMP-MISO Complaint proceeding to support its claim that “the double-charging issue extends far more broadly than market-to-market flowgates that are reciprocally coordinated under the JOA.”¹³⁴ AMP asserted that “the ‘double-counting concern’” of congestion faced by imports of energy discussed by the PJM Position Paper is also faced by generators pseudo-tied from MISO into PJM and relates to all congestion cost overlaps between the MISO-PJM interface and the pseudo-tied generators’ pricing nodes (i.e., the source nodal points), not just those subject to the JOA.¹³⁵

80. However, Complainants’ reliance on the PJM Position Paper as evidence of congestion overlap independent of flowgate binding suffers from several defects. First, as discussed above, we note that in the AMP-PJM Complaint, AMP did not make the claim that overlapping congestion charges result from circumstances beyond Reciprocally Coordinated Flowgates simultaneously binding, and thus did not rely upon the PJM Position Paper for such a claim. Further, as discussed above, AMP did not in its complaint against PJM refute the statements quoted above from the JCM Presentation

¹³² AMP-MISO Complaint at 15.

¹³³ *Id.*

¹³⁴ AMP Answer, Docket No. EL17-29-000, at 8 (filed Feb. 9, 2017).

¹³⁵ *Id.* at 8-9 (quoting PJM Position Paper at 6).

that “[t]he congestion cost overlap only occurs when an associated [market-to-market] constraint binds in both markets,” and that “[o]ften there is no congestion overlap since the issue is limited to [market-to-market] constraints and its associated congestion contribution between the source and interface.”

81. Second, neither Complainants in the Joint Rehearing Request, nor AMP in its answer in the AMP-MISO Complaint proceeding, describe in any detail the nature of the non-market-to-market congestion cost overlaps which they claim exists. Further, although the PJM Position Paper does mention the double-counting of congestion caused by PJM’s interface price definition with respect to the imports of energy, AMP did not adequately explain in its answer in the AMP-MISO Complaint how the PJM Position Paper supported its claim of non-market-to-market overlapping or duplicative congestion charges on pseudo-tied resources. Indeed, the cited PJM Position Paper did not discuss pseudo-tied resources or congestion charges associated with pseudo-tied resources, let alone non-market-to-market overlapping congestion charges on such resources. Thus, we disagree with Complainants that the PJM Position Paper is evidence that overlapping congestion charges result from circumstances beyond Reciprocally Coordinated Flowgates simultaneously binding.

82. Further, to support their claim that overlapping or duplicative congestion charges results from circumstances beyond when Reciprocally Coordinated Flowgates simultaneously bind, Complainants also reference the method by which AMP estimated in the AMP-PJM Complaint the amount of overlapping congestion charges assessed by PJM. However, Complainants do not explain how this method provides any relevant evidence in support of their claim. Nor do Complainants present the evidence supporting their claims that overlapping or duplicative congestion charges happen frequently and impact most hours observed. Similarly, though Complainants claim that the Commission erred in not substantively addressing evidence that overlapping or duplicative congestion charges occur regularly, Complainants do not identify that evidence.

83. It appears that Complainants’ assertion that overlapping or duplicative congestion charges occur in circumstances beyond when Reciprocally Coordinated Flowgates simultaneously bind in both RTOs may be based on the premise that any time the LMP at the MISO-PJM Interface Pricing Points differs from the LMP at the source nodal point in the MISO Transmission System, overlapping or duplicative congestion charges result. Complainants assert that this difference in LMPs corresponds with congestion on the MISO Transmission System that is collected by PJM, which is in addition to the congestion charges that MISO assesses for the same segment. However, Complainants’ have not shown that their assumption that PJM always assesses overlapping or duplicative congestion on the MISO Transmission System when there is a difference between the LMP at the MISO-PJM Interface Pricing Points and the LMP at the source nodal point is correct. In the Tilton and AMP-MISO Complaint proceedings, MISO witness Vannoy explained that the PJM market does not consider all congestion on the

MISO Transmission System when committing, dispatching, and developing LMPs for pseudo-tied customers:

PJM only dispatches for and prices congestion occurring [on] MISO's Transmission System represented by [Reciprocally Coordinated Flowgates], subject to the MISO-PJM JOA and during [market-to-market] coordination with MISO when the [Reciprocally Coordinated Flowgate] is bound in its market. This excludes congestion on any MISO Flowgate that is not an [Reciprocally Coordinated Flowgate] under the JOA or congestion on any Flowgate that is not bound in PJM's Day Ahead Market. . . . In fact, it would be improper for PJM to include all of MISO's congestion costs in its LMPs to the extent such transmission congestion is not covered under the MISO-PJM JOA.¹³⁶

Complainants provided no evidence rebutting this description of the limited nature of PJM's assessment of congestion on MISO's Transmission System.

84. Additionally, as discussed in more detail below, we disagree with Complainants' argument that, in the May 2019 Orders, the Commission erred in determining that the Phase 1 and PJM Phase 2 Revisions eliminated the overlapping or duplicative charges.

85. Complainants assert that both RTOs represented that they would provide rebates to address the congestion overlap, and that, contrary to these representations, MISO did not develop a rebate mechanism in the MISO Phase 2 Revisions or address the congestion overlap.¹³⁷ Complainants also emphasize that, when the Commission issued the Phase 1 Order and PJM Phase 2 Order concurrently, the Commission referred to "the remainder of the overlapping congestion charges,"¹³⁸ suggesting that MISO needed to provide rebates to fully address the congestion overlap. However, Complainants mischaracterize the statements to which they refer. In the Phase 1 Revisions, the RTOs did not commit that both would need to implement rebate mechanisms in Phase 2. Rather, the Phase 1 Revisions stated, with respect to Phase 2, "Where appropriate,

¹³⁶ MISO Answer, Prepared Direct Testimony of Kevin A. Vannoy on Behalf of MISO, Docket No. EL16-108-000, at 21-22 (filed Sept. 26, 2016); MISO Answer, Prepared Direct Testimony of Kevin A. Vannoy on Behalf of MISO, Docket No. EL17-29-000, at 23 (filed Jan. 25, 2017).

¹³⁷ Joint Rehearing Request at 24, 41-45.

¹³⁸ *Id.* at 41-42 (quoting Phase 1 Order, 164 FERC ¶ 61,069 at P 46).

[T]ariff modifications will establish or clarify congestion rebate mechanisms available to pseudo-tie transactions, including scheduling and eligibility requirements for both the Attaining [Balancing Authority] and Native [Balancing Authority].”¹³⁹ It was apparent from the Phase 1 Revisions that, at that time, the details of what modifications would be needed in Phase 2 to remove the remainder of the overlap were still under consideration.

86. Although in the Phase 1 Order the Commission found that the Phase 1 Revisions addressed the majority of the overlapping congestion charges,¹⁴⁰ and although in the PJM Phase 2 Order, the Commission found that the PJM Phase 2 Revisions addressed concerns about the potential for congestion charge overlap,¹⁴¹ the Commission required MISO to file informational filings detailing its progress toward addressing “the remainder of the overlapping congestion charges” in its upcoming Phase 2 Revisions.¹⁴² Contrary to Complainants’ contention, this statement in the Phase 1 Order was not an affirmative finding by the Commission that there remained overlapping congestion charges after accepting the Phase 1 and PJM Phase 2 Revisions, but was based on the representations by the RTOs in the Phase 1 proceedings indicating that both RTOs would be making Phase 2 Revisions following the Phase 1 Revisions. At the time the Commission issued the Phase 1 Order and PJM Phase 2 Order, the RTOs had not made explicit that the congestion overlap had been fully eliminated by those measures.

87. However, in the MISO Phase 2 proceeding, MISO confirmed that the congestion overlap had been eliminated.¹⁴³ MISO noted that in accepting the Phase 1 Revisions, the Commission found that the Phase 1 Revisions addressed the majority of the overlapping congestion charges affecting pseudo-tied generation in MISO and PJM.¹⁴⁴ Further, MISO explained that as a result of the acceptance of the PJM Phase 2 Revisions, “PJM can now assess and rebate pseudo-tie transaction(s) congestion charges resulting from [market-to-market] coordination for the path between the [pseudo-tied] resource in MISO

¹³⁹ MISO Transmittal Letter, Docket No. ER18-136-000, at 10 (filed Oct. 23, 2017); PJM Transmittal Letter, Docket No. ER18-137-000, at 10 (filed Oct. 23, 2017).

¹⁴⁰ Phase 1 Order, 164 FERC ¶ 61,069 at P 22.

¹⁴¹ PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 17.

¹⁴² Phase 1 Order, 164 FERC ¶ 61,069 at PP 46, 48.

¹⁴³ See MISO Phase 2 Order, 166 FERC ¶ 61,186 at PP 30-31 (citing MISO Answer, Docket Nos. ER19-34-000 and ER19-34-001, at 9 (filed Nov. 8, 2018) (MISO Nov. 8, 2018 Answer)) (internal citations omitted).

¹⁴⁴ *Id.* P 31 (citing MISO Nov. 8, 2018 Answer at 9) (internal citation omitted).

to the PJM-MISO interface for Real-Time deviations from day-ahead.”¹⁴⁵ MISO stated that “[i]n combination, the implementation of the Phase 1 solution and PJM’s Phase 2 mechanism rebates the PJM assessed charges for congestion for pseudo-tie paths that MISO and PJM enter [market-to-market] coordination on [Reciprocally Coordinated Flowgates].”¹⁴⁶ MISO stated that claims of overlapping congestion were, therefore, baseless.¹⁴⁷

88. In light of MISO’s explanation, the Commission explained:

[A]lthough in the Phase 1 Order the Commission directed MISO to submit informational filings detailing its progress toward a solution for the remainder of the overlapping congestion charges, MISO has confirmed . . . that the congestion overlap issue has been resolved. As MISO explained, with the acceptance of PJM’s Phase 2 Revisions, “PJM can now assess and rebate pseudo-tie transaction(s) congestion charges resulting from [market-to-market] coordination for the path between the [pseudo-tied] resource in MISO to the PJM-MISO interface for Real-Time deviations from day-ahead.” That is, PJM now charges or credits congestion on the overlap portion of the pseudo-tie path.¹⁴⁸

Thus, in the MISO Phase 2 Order, the Commission found that a rebate mechanism in the MISO Tariff was not necessary in order to address the overlapping congestion charge issue. The Commission specifically stated that “[b]ased on PJM’s and MISO’s representations in their Phase 1 Revisions and Phase 2 Revisions proceedings, and the absence of evidence to the contrary, the RTOs have demonstrated that the congestion overlap has been eliminated.”¹⁴⁹

¹⁴⁵ *Id.* (quoting MISO Nov. 8, 2018 Answer at 9).

¹⁴⁶ MISO Nov. 8, 2018 Answer at 9; *see also* MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 31.

¹⁴⁷ MISO Phase 2 Order, 166 FERC ¶ 61,186 at P 30 (citing MISO Nov. 8, 2018 Answer at 9).

¹⁴⁸ *Id.* P 61 (internal footnotes omitted).

¹⁴⁹ *Id.* P 59; *see also id.* P 61.

89. We disagree with Complainants that because the MISO Phase 2 Revisions did not provide rebates or credits that would apply to pseudo-tie transactions, further MISO Tariff revisions are needed to fully eliminate the congestion overlap. Crucially, the Complainants do not adequately explain why rebates from MISO would be necessary given that, under the PJM Phase 2 Revisions, PJM now charges or credits congestion on the overlap portion of the pseudo-tie path (i.e., the path from the source nodal point to the MISO-PJM interface).

90. We also disagree with Complainants' argument that the Commission erred in relying on its findings in the Phase 1 and Phase 2 Orders in these proceedings because those findings, according to Complainants, are inconsistent with the record evidence. Complainants do not describe the evidence in the present dockets that they believe conflicts with the Commission's findings in the Phase 1 and Phase 2 Orders. To the extent Complainants are alluding to their claim that the overlapping or duplicative congestion charges result from circumstances beyond Reciprocally Coordinated Flowgates simultaneously binding in both RTOs, as discussed above, we find this claim to be unsubstantiated and thus find that the record does not conflict with the findings in the Phase 1 and Phase 2 Orders. Further, Complainants have not presented any unresolved issues of material fact on the congestion charge overlap issue that warrant a hearing.

F. Administrative Charges

1. May 2019 Order

91. The Commission found that the MISO Tariff authorizes the assessment of administrative charges contained in Schedules 10 (ISO Cost Recovery Adder), 17 (Energy and Operating Reserve Markets Support Administrative Service Cost Recovery Adder) and 24 (Local Balancing Authority Cost Recovery Adder) on pseudo-tied resources.¹⁵⁰ Further, the Commission found that Tilton and AMP had not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess administrative charges.¹⁵¹ The Commission explained, *inter alia*, that exempting Tilton and AMP from the administrative charges under Schedules 10, 17, and 24 would result in other MISO Transmission Customers and Market Participants subsidizing the services and benefits that Tilton receives under these Schedules.

¹⁵⁰ Tilton Complaint Order, 167 FERC ¶ 61,147 at PP 74-77; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at PP 83-87.

¹⁵¹ Tilton Complaint Order, 167 FERC ¶ 61,147 at P 79; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 89.

92. The Commission also rejected Tilton and AMP's claims that the administrative charges MISO assesses on them are unjust and unreasonable because they are duplicative with administrative fees PJM charges for the same MWh of energy produced.¹⁵² The Commission noted that pseudo-tied resources impose administrative costs on both MISO and PJM. Thus, the Commission found that MISO's assessment of administrative charges under Schedules 10, 17, and 24 has not been shown to be unjust, unreasonable, unduly discriminatory or preferential.¹⁵³

2. Request for Rehearing

93. Complainants argue that they met the burden of showing they were assessed overlapping administrative charges by the RTOs, i.e. that charges assessed by MISO were duplicative of those charged by PJM. Complainants contend that by denying refunds for these charges, the Commission departed from precedent precluding the assessment of duplicative charges. Complainants assert that the Commission should have found that the overlapping administrative charges were unjust and must set them for procedures similar to those the Commission ordered for the overlapping congestion charges.¹⁵⁴ In addition, Complainants allege that, as a result of the use of Financial Schedules, customers were assessed two sets of administrative fees by MISO, one on the buy side and one on the sell side.¹⁵⁵

3. Commission Determination

94. We continue to find that the administrative charges assessed by MISO were not duplicative of the charges assessed by PJM, or vice versa. By taking transmission service in both RTOs, Complainants were causing administrative costs to be incurred by both RTOs. Complainants have not demonstrated a reason why they should be shielded from any of the administrative costs that correspond with both parts of their transmission service. Even in theory, both RTOs charging for their respective administrative costs does not result in overlapping charges. We therefore deny the Joint Rehearing Request as it relates to the assessment of overlapping administrative charges.

¹⁵² Tilton Complaint Order, 167 FERC ¶ 61,147 at P 82; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 92.

¹⁵³ *Id.*

¹⁵⁴ Joint Rehearing Request at 16.

¹⁵⁵ *Id.* at 15.

95. With regard to Complainants' further allegation that MISO's Financial Schedules result in duplicative administrative charges by MISO because the same party is both buyer and seller under the Financial Schedule, we note that in none of the MISO/PJM Pseudo-Tie Congestion Complaints have any of the Complainants alleged, or demonstrated, that MISO's Financial Schedule construct causes administrative fees that are duplicative in and of themselves. Thus, we find this assertion to be not only unsubstantiated, but a new argument raised on rehearing, which is not allowed.¹⁵⁶

G. Losses Charges

1. May 2019 Orders

96. The Dynegy Companies Complaint sought refunds with respect to MISO's assessment of losses charges. The Commission found that the Dynegy Companies had not shown that it was unjust, unreasonable, unduly discriminatory or preferential for MISO to assess losses charges on the Dynegy Companies.¹⁵⁷ In response to Dynegy Companies' claim that they have been assessed duplicative losses charges, the Commission noted MISO's explanation that there could be no overlapping losses charges, even in theory, as any overlapping charges applied only to congestion and arose solely when the RTOs' coordinated market-to-market flowgates (i.e., Reciprocally Coordinated Flowgates) bind in both markets.¹⁵⁸ In addition, the Commission found that the Dynegy Companies had not provided sufficient evidence to demonstrate that they have been subject to overlapping losses charges.

2. Request for Rehearing

97. Complainants argue that the Commission erred by failing to recognize that unjust and unreasonable duplicative losses charges were being assessed, and by not including

¹⁵⁶ *E.g., PJM Interconnection, L.L.C.*, 126 FERC ¶ 61,030, at P 15 (2009). The Commission has held that raising issues for the first time on rehearing is disruptive to the administrative process and denies parties the opportunity to respond. *Id.* P 15 n.10 (citing *Enron Power Mktg., Inc. v. Sellers of Energy and Ancillary Services*, 122 FERC ¶ 61,015, at P 64 n.98 (2008) (internal citation omitted); *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,113, at P 188 (2006) (denying rehearing of new issues as outside the proper scope of the rehearing)).

¹⁵⁷ Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at PP 62-64.

¹⁵⁸ *Id.* (citing MISO Answer, Docket No. EL17-54-000, at 6, 19-20 (filed April 17, 2017)).

those charges in the settlement and hearing process.¹⁵⁹ Complainants assert that they provided record evidence showing that MISO and PJM have assessed losses charges against the same power flows on the same transmission lines.¹⁶⁰ Complainants contend that the Tilton, AMP-MISO, and NIMPA Complaints also described the process by which losses charges are assessed by the RTOs through the use of the Financial Schedule by MISO and in PJM's LMPs.¹⁶¹ Complainants also contend that an exhibit to the Dynegy Companies Complaint provided evidence that MISO assessed approximately \$3.4 million in net losses charges for the period from June 1, 2016 to February 28, 2017 for the Dynegy Companies' pseudo-tied resources and that PJM assessed losses charges for the same transmission path for that same time period in the amount of approximately \$5.5 million.¹⁶² Complainants note that the Dynegy Companies explained that these same resources were assessed duplicative charges "inasmuch as PJM is also assessing congestion and losses charges to the same Pseudo-Tied resources between the generator bus and the MISO/PJM interface through [LMPs]."¹⁶³ Thus, Complainants assert that some portion of the MISO losses charges is necessarily duplicative or overlapping.

98. Complainants also assert that the RTOs admit that they assess losses charges to pseudo-tied resources for losses on the same paths for the same power flows.¹⁶⁴ Complainants argue that MISO and PJM have admitted that MISO's Financial Schedule captures the losses between the source and the interface point and that PJM models the unit like any other asset in its market and establishes an LMP, which includes losses.¹⁶⁵

¹⁵⁹ Joint Rehearing Request at 3, 53.

¹⁶⁰ *Id.* at 53 (citing, *inter alia*, Dynegy Companies Complaint, Attachment A, Ex. 1).

¹⁶¹ *Id.* at 57 (citing Tilton Complaint at 12-13, 16-18; AMP-MISO Complaint at 12-13, 16-17; NIMPA Complaint at 5, 11-12).

¹⁶² *Id.* at 57-58 (citing Dynegy Companies Complaint, Attachment A, Ex. 1).

¹⁶³ *Id.* at 58 (quoting Dynegy Companies Complaint at 10 (internal citation omitted)).

¹⁶⁴ *Id.* at 53 & n.160; *see also id.* at 57.

¹⁶⁵ *Id.* at 57 (citing AMP-PJM Complaint, Ex. AMP-3); *see also id.* at 53 & n.160 (citation omitted).

99. Further, Complainants assert that Commission orders explaining how losses are assessed further demonstrate the existence of overlapping losses charges.¹⁶⁶ Complainants note that the Commission has previously explained that PJM assesses losses charges to pseudo-tied resources between the generator bus and the MISO-PJM interface through PJM's LMP.¹⁶⁷ Complainants note that in the PJM Phase 2 Order, the Commission found that "PJM's proposed charges and credits are calculated based on real-time LMP, which reflects congestion and loss, for the path from a pseudo-tied generator in MISO to the MISO-PJM interface for deviations between that generator's day-ahead schedule and its real-time generation."¹⁶⁸ In addition, Complainants note that MISO assesses losses charges to the pseudo-tie resources.¹⁶⁹

100. Complainants explain that double transmission losses for a single transaction do not occur over the same line but rather, only one set of losses occurs.¹⁷⁰ Complainants argue that, likewise, only one set of charges for such losses should apply. Complainants argue that the Commission wrongly departed from precedent that duplicative charges for the same service are unjust and unreasonable.¹⁷¹

3. Commission Determination

101. We deny rehearing. As an initial matter, we note that the Dynegy Companies were the only Complainants who sought relief for overlapping or duplicative losses charges in their Complaint against MISO. To the extent that the other Complainants in the Joint Rehearing Request are now seeking relief for purported overlapping or duplicative losses charges, we find this to be an impermissible expansion of the relief requested in the Tilton, AMP-MISO, NIMPA, and AMP-PJM Complaints. This is a new

¹⁶⁶ *Id.* at 53, 58-59.

¹⁶⁷ *Id.* at 53 n.161 (citing PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 37).

¹⁶⁸ *Id.* at 57 (quoting PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 37).

¹⁶⁹ *Id.* at 53 n.161 (citing Tilton Complaint Order, 167 FERC ¶ 61,147 at P 73; AMP-MISO Complaint Order, 167 FERC ¶ 61,148 at P 82; Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at P 60); *see also id.* at 58 (citing Dynegy Companies Complaint Order, 167 FERC ¶ 61,150 at PP 25-35).

¹⁷⁰ *Id.* at 56.

¹⁷¹ *Id.* at 59-60.

argument raised by these other Complainants on rehearing that was not raised in their Complaints, and thus, is not allowed as to them.¹⁷²

102. We disagree with the Complainants' claim that the Commission erred in finding insufficient evidence that the RTOs have assessed unjust and unreasonable duplicative losses charges on Complainants. Although Complainants argue that overlapping or duplicative losses charges are assessed on Complainants through the use of the Financial Schedule by MISO and in PJM's LMPs, Complainants have not established a valid basis for this claim or evidence to support it. MISO explained that there could be no overlapping losses charges, even in theory. As MISO stated in its answer to the Dynegy Companies Complaint, the JOA market-to-market protocol deals solely with congestion and thus has no impact on losses charges.¹⁷³ Thus, Complainants have not provided an adequate theoretical or factual basis to support their claim that the RTOs assess overlapping or duplicative losses charges over the same transmission path.

103. We disagree with Complainants' assertion that the Commission ignored record evidence of overlapping or duplicative losses charges. The exhibit to the Dynegy Companies Complaint referenced by Complainants merely demonstrates that each of the RTOs assess losses charges to pseudo-tied transmission customers, and not that they assess overlapping or duplicative losses charges on the same transmission path.¹⁷⁴ Similarly, contrary to Complainants' assertions that the RTOs' have acknowledged that MISO assesses losses charges through the use of Financial Schedules and that PJM includes losses in its LMPs, this acknowledgment is not tantamount to an admission by the RTOs that the RTOs assess duplicative losses charges on the same transmission path for the same power flows.

104. However, we herein clarify that the language Complainants have quoted from paragraph 37 of the PJM Phase 2 Order may have inadvertently suggested that PJM assesses losses through its LMP over the same transmission path that MISO does.¹⁷⁵ This language from paragraph 37 cites to the Operating Agreement, Schedule 1, Section 3.8 (and the parallel provision of Tariff at Attachment K-Appendix, Section 3.8), which do not address losses. Rather, under Section 3.8, PJM calculates charges and credits based

¹⁷² See *supra* note 156.

¹⁷³ MISO Answer, Docket No. EL17-54-000, at 6 (filed Apr. 17, 2017).

¹⁷⁴ See *supra* notes 160, 162.

¹⁷⁵ See *supra* P 99 & notes 167-168; see also PJM Phase 2 Order, 164 FERC ¶ 61,073 at P 37.

on the “Real-time *congestion* LMP for the path from the Pseudo-Tie generator to the MISO-PJM common interface.”¹⁷⁶

The Commission orders:

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

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹⁷⁶ PJM Tariff, Attachment K-Appendix, Section 3.8; PJM Operating Agreement, Schedule 1 (emphasis added).