

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Southwest Power Pool, Inc.,)	
Complainant,)	
)	
v.)	Docket No. EL14-____-000
)	
Midcontinent Independent System)	
Operator, Inc.,)	
Respondent.)	

Southwest Power Pool, Inc.,)	Docket No. ER14-1174-000
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Midwest Independent		
Transmission System Operator, Inc.,)	
Complainant,)	
)	
v.)	Docket No. EL11-34-____
)	
Southwest Power Pool, Inc.,)	
Respondent.)	

**COMPLAINT AND REQUEST FOR FAST TRACK PROCESSING AND
MOTION TO CONSOLIDATE**

Pursuant to sections 206 and 306 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824e, 825e, and Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“FERC” or “Commission”), 18 C.F.R § 385.206, Southwest Power Pool, Inc. (“SPP”) submits this Complaint for an order finding that the Midcontinent Independent System Operator, Inc. (“MISO”) is violating the Joint Operating Agreement (“JOA”) between SPP and MISO and SPP’s Open Access Transmission Tariff (“SPP Tariff”), requiring MISO to compensate SPP for use of SPP’s transmission system in accordance with the SPP Tariff. In the event the Commission

does not so find, SPP alternatively requests that the Commission find (i) that the JOA is no longer just, reasonable, and not unduly discriminatory to the extent it does not provide a mechanism by which SPP may assess charges for MISO's use of the SPP transmission system to integrate the former Entergy Operating Companies ("Entergy"); and (ii) that the compensation mechanism set forth herein is the just, reasonable, and not unduly discriminatory rate for MISO's use of the SPP transmission system.

I. INTRODUCTION AND SUMMARY

On December 19, 2013, Entergy formally integrated into MISO, as the newly-constituted "MISO South" region.¹ The former MISO market, as it was constituted prior to the Entergy integration, was renamed "MISO Midwest."

Immediately following the December 19, 2013 integration of Entergy, MISO began sending energy flows between MISO Midwest and MISO South, in both directions, in excess of the 1,000 megawatt ("MW") direct physical connection that MISO has between those regions. Despite requests to stop from several affected systems, including SPP, MISO continues to dispatch its system at levels far exceeding the 1,000 MW of its direct physical connection.² As a result, significant intentional, unscheduled incremental power flows are crossing SPP's system without any corresponding

¹ The MISO South region includes the Entergy Operating Companies, Cleco Corporation, Lafayette Utilities System, Louisiana Energy and Power Authority, Louisiana Generating, South Mississippi Electric Power Association, and East Texas Electric Cooperative.

² On December 9, 2013, SPP requested assurances from MISO that MISO not dispatch flows in excess of MISO's physical connection. *See* Attachment A, Affidavit of Carl A. Monroe ("Monroe Aff.") at Exh. No. 1 (SPP December 9, 2013 Letter). On December 12, 2013, MISO rejected SPP's request. *See id.* at Exh. No. 2 (MISO December 12, 2013 Letter).

reservation, service agreement, or compensation. SPP's many attempts to negotiate a resolution with MISO have failed.

As the basis for its unauthorized flows, MISO relies on section 5.2 of the JOA. MISO initially supported its reliance on section 5.2 by obtaining from the Commission a declaratory order confirming MISO's right to use SPP's system to serve internal load following the integration of Entergy.³ However, the Commission's order was subsequently set aside by the U.S. Court of Appeals for the D.C. Circuit, and the mandate enforcing the court's vacatur and remand is expected shortly.⁴

By this Complaint, SPP seeks to ensure that it is properly compensated for the use of its transmission system by MISO. The issues presented are framed by the following facts:

First, SPP and MISO disagree about the meaning of section 5.2 of the JOA and whether it may be used by MISO in the manner MISO is unilaterally currently using it to avoid transmission reservations and the rates, terms, and conditions of the SPP Tariff.

Second, the Commission's order that initially confirmed MISO's interpretation of the JOA has been vacated with instructions from the Court that the Commission consider all relevant evidence.

Third, on several occasions, including in its initial declaratory order, the Commission has recognized that, irrespective of section 5.2, the JOA must be

³ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011) ("EL11-34 Initial Order"), *order on reh'g*, 138 FERC ¶ 61,055 (2012) ("EL11-34 Rehearing Order").

⁴ *Sw. Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013).

renegotiated to account for the significant changes resulting from the MISO-Entergy integration, but the parties agree that renegotiation has reached impasse.

Fourth, integration has occurred and, beginning December 19, 2013, MISO has made daily intentional use of the SPP system without reserving capacity or paying for service.

Finally, because the SPP transmission owners and their customers are suffering substantial harm due to MISO's *ongoing*, intentional, uncompensated use of SPP's system, an expedited evidentiary hearing is required to address the issues raised by this Complaint and implicated by the Court's remand.

As explained in this Complaint and in the attached affidavit of Carl Monroe, SPP's chief negotiator for the JOA, section 5.2 was intended to authorize the use of shared capacity for the purpose of reaching *external third parties*, and not as a vehicle for one party to serve its own, internal load.⁵ No authority from the Commission or a court provides otherwise.⁶ Thus, MISO has no authority to place intentional, unscheduled flows on SPP's system without an OASIS reservation and a corresponding transmission service agreement.

SPP therefore began invoicing MISO under the SPP Tariff for the unauthorized use of its system, which commenced December 19, 2013. To date, MISO has refused to

⁵ See Monroe Aff. ¶¶ 6-12.

⁶ The Commission's vacated order is null and void. See *United States v. Sigma Int'l Inc.*, 300 F.3d 1278, 1280 (11th Cir. 2002) (a vacated order has "no legal effect whatever"); *Action on Smoking & Health v. Civil Aeronautics Bd.*, 713 F.2d 795, 797 (D.C. Cir. 1983) ("To vacate, as the parties should well know, means to annul; to cancel or rescind; to declare, to make, or to render, void; to defeat; to deprive of force; to make of no authority or validity; to set aside.") (citations and internal quotation marks omitted).

pay. In order to ensure an effective means of recovering charges associated with MISO's unauthorized use, SPP is submitting contemporaneously with this Complaint an unexecuted service agreement under the SPP Tariff pursuant to FPA section 205. Acceptance of that agreement, subject to refund, will ensure that MISO's use of the SPP system is treated comparably to service taken by all other customers.

Finally, SPP is including as part of this filing an alternative request pursuant to FPA section 206 providing for compensation to SPP, should the Commission determine that section 5.2 of the JOA currently authorizes MISO's use of the SPP system without compensation. The requested alternative relief is necessary to ensure that the JOA operates in a manner that is just, reasonable and not unduly discriminatory, subjecting MISO's use of the SPP transmission system to the rates, terms and conditions of a service agreement under the SPP Tariff.

SPP recognizes that the Commission cannot summarily decide the Complaint without the benefit of a hearing. There are matters of material fact in dispute, including the intentions of the parties in agreeing to JOA section 5.2. The court's remand compels consideration of evidence going to contractual intent, trade usage, and course of performance. Accordingly, SPP requests that the Commission:

- (1) consolidate this Complaint with the proceeding on remand of the court's order in *SPP v. FERC* and hold hearing and settlement procedures;
- (2) place into effect, subject to refund and the outcome of the consolidated proceeding, the unexecuted service agreement submitted contemporaneously with this Complaint in Docket No. ER14-1174-000, under which MISO is required to reserve non-firm point-to-point transmission service and compensate SPP for MISO's use of SPP's transmission system in excess of

MISO's direct physical interconnection capacity between MISO Midwest and MISO South, and consolidate it with this proceeding;

- (3) find that MISO is liable for unreserved use penalties for the unauthorized use of SPP's transmission system, beginning December 19, 2013; and,
- (4) in the event that the Commission finds that JOA section 5.2 authorizes MISO to use SPP's system without compensation, in the alternative find pursuant to section 206 that the JOA is unjust, unreasonable, and unduly discriminatory, and grant relief that places into effect the rate for compensation and other terms of service memorialized in the proposed service agreement.⁷

One way or another, by accepting the unexecuted service agreement pursuant to FPA section 205 because the JOA does not permit the usage of SPP's system as MISO is currently unilaterally using it, or by amending JOA service to incorporate the service agreement pursuant to FPA section 206, SPP should be compensated. Material circumstantial changes – namely, the MISO-Entergy integration – have occurred since the JOA was originally executed. As the Commission has expressly found, the changed circumstances “necessitate” revisions to the JOA.⁸ An operating agreement that permits MISO's free, unlimited use of SPP's transmission system to serve the vast incremental load of the Entergy operating companies can no longer be found just, reasonable, and not

⁷ A copy of the service agreement is enclosed as Attachment B, which is identical to the service agreement submitted pursuant to section 205 in Docket No. ER14-1174-000. Through this complaint, SPP alternatively requests the Commission to accept the service agreement pursuant to section 206 with an effective date of the day after the filing of this complaint.

⁸ *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 129 (2013).

unduly discriminatory.⁹ MISO and its customers are benefitting from the SPP transmission system. They should pay for its use like all other users of the system. It makes no sense for all of the other users of the SPP transmission system to have to pick up the tab for MISO's use of the SPP system to integrate Entergy into MISO.

SPP requests that the Commission consider this Complaint under its Fast Track procedures such that an initial order setting this Complaint for hearing is issued contemporaneously with an initial hearing order in Docket No. ER14-1174-000 on the proposed service agreement for MISO to reserve and take service on SPP's system.

II. BACKGROUND

A. The MISO South Integration and the Single Weak Interconnect Between the Two MISO Regions.

The MISO South region integrated into MISO effective December 19, 2013. It has approximately 30,000 MW of generation capacity, and approximately 27,000 MW of load. The MISO Midwest region has approximately 146,000 MW of generation capacity, and approximately 103,000 MW of load.

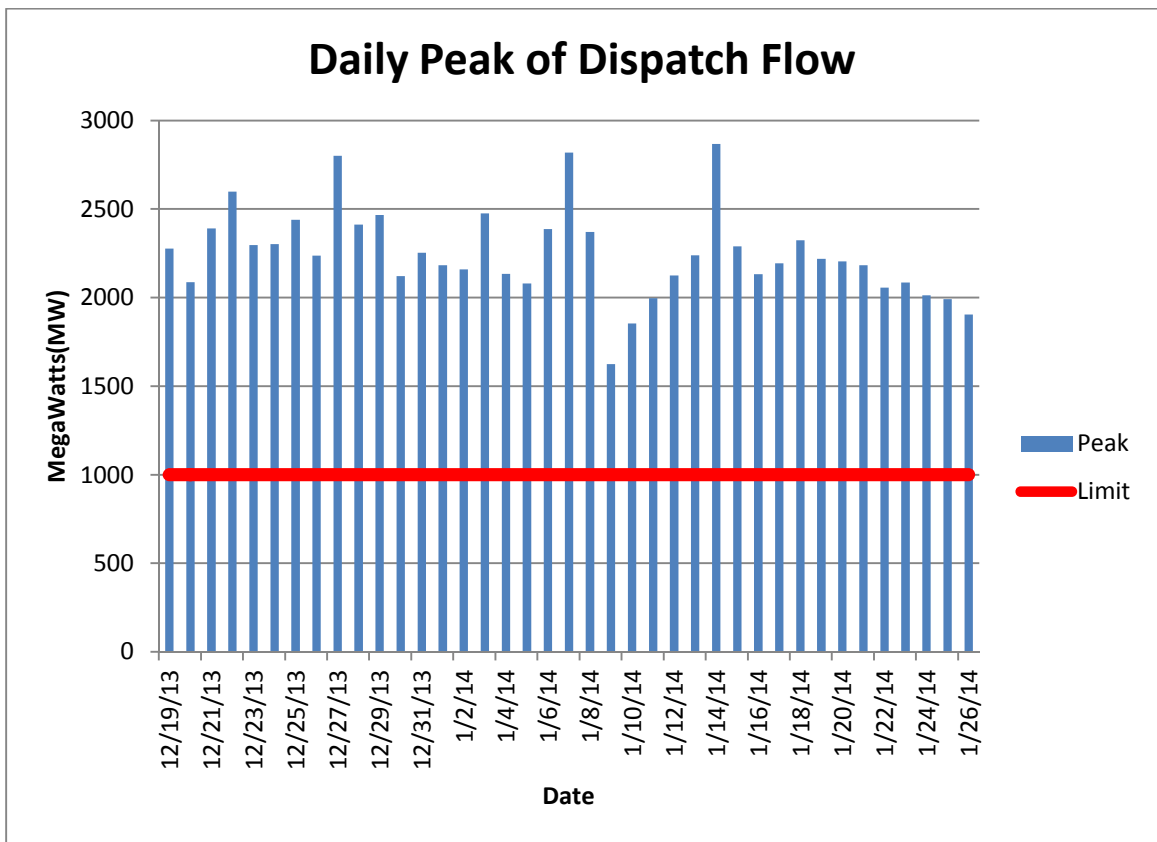
Despite the vast size and generation capabilities of the disparate MISO regions, MISO has but a single interconnection path of only 1,000 MW to connect the MISO Midwest and MISO South regions. This interconnection path capacity exists pursuant to an agreement among Ameren Corporation, a MISO transmission-owning member; Entergy, a MISO-transmission owning member; and Associated Electric Cooperative, Inc. ("AECT"), which is not a member of MISO or SPP. MISO's rights to use its 1,000 MW of capacity run in both directions, north-to-south and south-to-north. There are no

⁹ 16 U.S.C. § 824d(b).

other MISO owned or controlled interconnections between MISO Midwest and MISO South.

To serve the new MISO South loads as part of the MISO market, MISO dispatches significant energy flows, currently predominately from MISO Midwest to MISO South, but also on occasion in the opposite direction.¹⁰ As shown in the below graph, since December 19, 2013, flows between the two MISO regions have regularly exceeded MISO’s 1,000 MW path.

Figure 1



¹⁰ See Monroe Aff. ¶ 4 and Exh. No. 4 (Daily Peak of Dispatch Flow, which also is included in this complaint at Figure 1).

The flows in excess of 1,000 MW necessarily flow across another transmission system or systems to reach their designated sinks. MISO has not reserved transmission capacity for these flows on SPP or any other system.

B. The SPP-MISO Joint Operating Agreement and the Contract Path Sharing Provision in Section 5.2.

In April 2011, in Docket No. EL11-34, MISO filed a petition for a declaratory order requesting that the Commission interpret the contract path sharing provision (section 5.2) of the JOA between SPP and MISO. That section provides as follows:

Sharing Contract Path Capacity. If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties. This will not create new contract paths for either Party that did not previously exist. SPP will not be able to deal directly with companies with which it does not physically or contractually interconnect and the [MISO] will not be able to deal directly with companies with which it does not physically or contractually interconnect.

MISO requested that the Commission declare section 5.2 as authorizing MISO to use SPP's transmission system to reach and serve the Entergy load as part of the MISO-Entergy integration.

SPP protested MISO's petition and disputed MISO's interpretation of section 5.2. SPP presented evidence – in the form of an affidavit of Carl Monroe, SPP's Executive Vice-President, Chief Operating Officer, and lead negotiator for the JOA – who testified that section 5.2 was never envisioned to permit continual, daily use of the other party's transmission system to serve internal load, but was instead intended to provide shared use rights only to external, third-party entities. SPP also offered trade usage and other evidence to show that MISO's proposed interpretation was directly at odds with the commonly understood meaning of “contract path” within the electric industry and even under MISO's own business practices.

The Commission accepted MISO's interpretation.¹¹ In an effort to ascertain the parties' intentions, the Commission considered certain extrinsic evidence, but "decline[d] to consider" evidence presented by SPP.¹² The Commission also relied on an alleged incident of course of performance, described in an affidavit accompanying MISO's petition, to support its interpretation of section 5.2.¹³

On appeal, the U.S. Court of Appeals for the District of Columbia Circuit found "the Commission's complete failure to consider the evidence proffered renders its orders arbitrary and capricious." The court therefore vacated and remanded the Commission's orders interpreting section 5.2 of the JOA.¹⁴

C. Attempts at Renegotiation of the JOA.

Although the Commission, in Docket No. EL11-34, upheld MISO's interpretation of section 5.2, the Commission also held that the "JOA should be renegotiated" in light of the Entergy integration and that JOA section 3.1 establishes "an obligation to negotiate in good faith in response to revisions . . . SPP may propose."¹⁵ The Commission affirmed this obligation on rehearing, stating:

We emphasized in the July 1 Order [that] section 3.1 of the SPP JOA provides a mechanism to revise the SPP JOA. The July 1 Order further noted that MISO and SPP have an obligation to negotiate in good faith in response to revisions either MISO or SPP may propose. We encourage the parties to work together to address

¹¹ EL11-34 Initial Order at P 60.

¹² EL11-34 Rehearing Order at PP 21-23.

¹³ *Id.* at P 20.

¹⁴ *Sw. Power Pool, Inc.*, 736 F.3d at 99.

¹⁵ EL11-34 Initial Order at P 64.

these issues so that the objectives of the SPP JOA can be fulfilled efficiently and economically.¹⁶

Further, in *ITC Holdings Corp.*,¹⁷ the Commission “strongly encourage[d] [MISO and the owners of the transmission systems used by MISO to serve MISO South load] to work together to resolve these issues.”¹⁸ As to use of the SPP system in particular, the Commission explicitly found that the “transfer of control of the Entergy transmission facilities to MISO *necessitates* the renegotiation of the MISO-SPP JOA.”¹⁹ The Commission reiterated “that the MISO-SPP JOA should be renegotiated pursuant to its terms and [] that MISO and SPP are obligated to negotiate in good faith in response to revisions either party might propose.”²⁰

SPP’s efforts to engage MISO in renegotiation of the JOA proved futile. In the course of these negotiations, SPP offered several proposals to revise JOA section 5.2 to address MISO’s use of SPP’s system. MISO rejected each of SPP’s proposals without offering any counterproposal. Negotiations have reached an impasse.²¹

¹⁶ EL11-34 Rehearing Order at P 30.

¹⁷ 143 FERC ¶ 61,257 (2013).

¹⁸ *Id.* at P 147. SPP’s rehearing request in that docket seeking resolution of the use and compensation issues remains pending. Request for Rehearing of Southwest Power Pool, Inc., Docket No. ER12-2681-000, et al. (July 22, 2013). In addition, SPP has sought resolution of the use and compensation issues in response to MISO’s compliance filing of a report on the negotiations between SPP and MISO. Comments, Protest, and Request for Immediate Action of Southwest Power Pool, Inc., Docket No. ER12-2681-000, et al. (Nov. 18, 2013).

¹⁹ *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 129 (emphasis added).

²⁰ *Id.* at P 150.

²¹ *See generally* Monroe Aff. at Exh. No. 2.

D. Post-Court Remand Developments.

After the D.C. Circuit issued its opinion on December 3, 2013, vacating and remanding the Commission’s orders, SPP sent a letter to MISO seeking assurance that “MISO will refrain from any flows of energy between the MISO Midwest Region and the new MISO South Region . . . in excess of MISO’s 1000 megawatt contractual tie between the two regions.”²² SPP also stated that to the extent MISO’s flows between the regions exceed 1,000 MW, “SPP will consider MISO to have made unauthorized, unreserved use of the SPP transmission system subject to all applicable SPP tariff charges and penalties.”²³

MISO responded by letter three days later, stating that “MISO cannot provide the assurance you request to limit MISO’s directional market flows under the Joint Operating Agreement to 1,000 MW.”²⁴ MISO recognized that “[a] dispute continues to exist regarding this issue” and that “both parties acknowledged that we had bargained to an impasse.”²⁵ On December 19, 2013, MISO began, and has since continued, sending energy flows between the two regions in excess of its 1,000 MW interconnection capacity.

²² *Id.* at Exh. No. 1.

²³ *Id.*

²⁴ *Id.* at Exh. No. 2.

²⁵ *Id.*

III. DISCUSSION

A. Section 5.2 of the JOA Does Not Provide MISO with Authority to Intentionally Place Flows on SPP's Transmission System Without Reservation and Payment.

As discussed, MISO petitioned the Commission for an interpretation of the JOA to confirm that section 5.2 authorized MISO's use of SPP's transmission capacity to serve internal load following the MISO-Entergy integration. The Commission's orders granting MISO's petition were subsequently vacated and remanded by the court, which found the Commission's refusal to consider evidence proffered by SPP to be arbitrary and capricious.²⁶

Notwithstanding the court's vacating of the Commission's order, MISO continues to rely on its unilateral interpretation of section 5.2 as the basis for using SPP's system without reservation or compensation.²⁷ In its December 12, 2013 letter to SPP, MISO specifically stated that, despite the court's decision, it viewed section 5.2 to authorize the energy flows between MISO Midwest and MISO South.

The ostensible regulatory authority that formerly provided a basis for MISO's interpretation no longer exists. The Commission's orders in Docket No. EL11-34 have been vacated, which is as if they were never issued.²⁸ Moreover, MISO is simply wrong in its interpretation of section 5.2. Contracts may not be read to produce absurd results.²⁹

²⁶ *Sw. Power Pool, Inc.*, 736 F.3d at 99.

²⁷ *See* Monroe Aff. at Exh. No. 2.

²⁸ *See supra* note 6.

²⁹ *See Beanstalk Group, Inc. v. AM General Corp.*, 283 F.3d 856, 860 (7th Cir. 2002) (“[A] contract will not be interpreted literally if doing so would produce absurd results, in the sense of results that the parties, presumed to be rational persons pursuing rational ends, are very unlikely to have agreed to seek.”); *United States v. Irvine*, 756 F.2d 708, 710-11 (9th Cir. 1985) (“The language of the
(Cont'd . . .)

Yet, as next discussed, MISO's interpretation of section 5.2 leads to just such absurdity, by allowing MISO's unfettered, unreserved, and uncompensated use of SPP's transmission system, unlike any other's use of the system, so that MISO can serve its weakly-connected, newly-integrated, and substantially increased internal load.

- 1. It was not the intention of the negotiating parties that JOA section 5.2 be used to accommodate market flows to serve one party's internal load on a regular, continuous basis without compensation.*

Use of JOA section 5.2 to serve the internal load of either MISO or SPP on a regular basis could not possibly have been contemplated when the parties entered the JOA ten years ago. At the time, 75 percent of the approximately 6,500 megawatts of MISO Midwest to SPP interconnection capacity currently in place did not even exist. Nearly 5,000 megawatts of the capacity that is present today between the MISO Midwest and SPP systems exist only because several Nebraska utilities joined SPP, and MidAmerican joined MISO, years after the JOA was executed. Of course, at the time of the JOA, there was no expectation that the Entergy operating companies would subsequently become internal to the MISO system.

The only evidence on the issue of contemporaneous contractual intent has come from Mr. Monroe, who negotiated the JOA on behalf of SPP. As Mr. Monroe's attached affidavit confirms, when section 5.2 was placed in the JOA, SPP understood it to provide for sharing of contract path capacity for purposes of point-to-point transactions to third parties interconnected with both MISO and SPP.³⁰ SPP's understanding is consistent

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contract is to be read as a whole and given a reasonable interpretation, not an interpretation that would produce absurd results.”) (citations omitted).

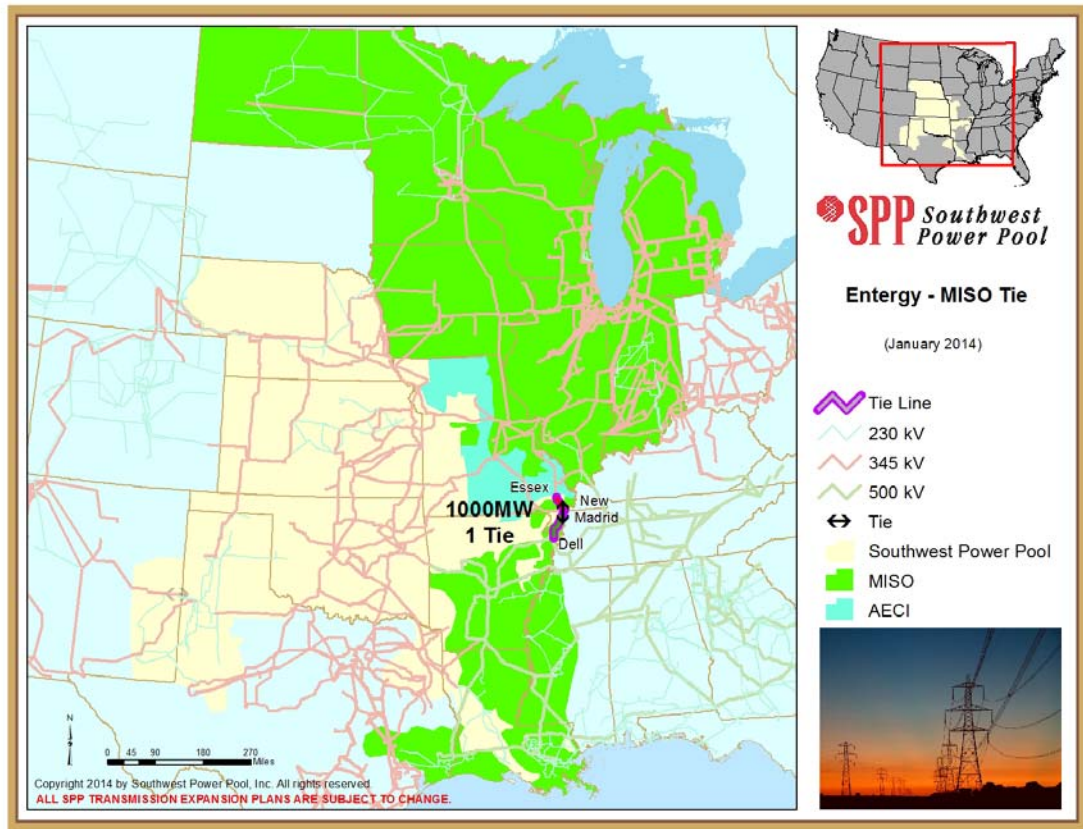
³⁰ Monroe Aff. ¶¶ 6-12.

with the ordinary usage of the term “contract path,” as discussed in more detail below. SPP did not understand, and certainly did not agree, that section 5.2 could eventually serve as the vehicle by which MISO could later expand and integrate approximately 30,000 MW of generation capacity, and approximately 27,000 MW of new *internal* load, without reserving capacity or compensating SPP for the vast power transfers crossing SPP’s system.³¹

Indeed, it defies logic to presume that SPP would rationally agree to the interpretation of section 5.2 urged by MISO. As the map below shows, MISO Midwest is tied to MISO South through a single 1,000 MW interconnection at the southern tip of the MISO Midwest system, connecting to the northern tip of MISO South.

³¹ MISO supplied the words for section 5.2. As a general matter, therefore, the Commission should interpret the words against MISO if there are alternative readings of them. *See Ohio Power Co. v. FERC*, 744 F.2d 162, 167 (D.C. Cir. 1984) (“[I]n choosing among reasonable meanings of a contract, the meaning which operates against the drafter is to be preferred.”); Restatement (Second) of Contracts § 206 (1981) (“In choosing among the reasonable meanings of a promise or agreement or a term thereof, that meaning is generally preferred which operates against the party who supplies the words . . .”).

Figure 2



As actual experience demonstrates,³² the integration of MISO South involves high levels of energy transfers well beyond the 1,000 MW of capacity held by MISO. These power flows *necessarily and knowingly* cross the SPP system, which lies between MISO Midwest and MISO South. Under MISO’s view of section 5.2, the entirety of SPP’s interconnection capacity between SPP and MISO South is available for use by MISO, free of charge, and without any requirement that MISO secure a reservation, schedule its flows, or execute a service agreement.

Nothing in the history of the MISO/SPP negotiations supports MISO’s interpretation of section 5.2. While the Commission ordered SPP and MISO to adopt

³² See Monroe Aff. at Exh. No. 4.

arrangements similar to the MISO/PJM Interconnection, L.L.C. (“PJM”) seems arrangements, the focus of the parties’ dispute over the JOA was not about section 5.2, but rather whether to include a congestion management process in the JOA similar to that adopted by MISO and PJM.³³ As MISO has stated, “[T]he chief difference between the two versions [of the parties’ drafts of a JOA] was the lack of a Congestion Management Process (“CMP”) protocol.”³⁴ Section 5.2 was never the subject of any focused discussions between the parties, and the Commission never ordered the parties to address the matters covered by section 5.2 in any particular way, much less in a way that would authorize MISO’s unreserved and uncompensated use of the SPP system in the volumes now taking place.³⁵

What the Commission actually said at the time was that “[w]e do not require that all RTOs necessarily must have a uniform practice, but the RTO reliability and market interface practices must be compatible.”³⁶ The issues here are not about the development of compatible reliability and interface practices; they concern the justness and reasonableness of MISO’s claimed interpretation that it is entitled to free, unlimited, and unreserved use of SPP’s transmission facilities.³⁷

³³ Petition for Declaratory Order, Request for Shortened Notice Period, and Request for Expedited Treatment of Midwest Independent Transmission System Operator, Inc., Docket No. EL11-34-000, at 18 (Apr. 8, 2011) (“MISO EL11-34 Petition”).

³⁴ *Id.*

³⁵ *See also* Monroe Aff. ¶ 10 (SPP was not involved in MISO/PJM discussions).

³⁶ *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 202 (2004); MISO EL11-34 Petition at 18 n.61.

³⁷ The Commission’s intentions regarding the adoption of a JOA were not ambiguous. They were spelled out in significant detail. As to reliability practices, the Commission said that it expected “coordination of reliability practices and sharing of reliability data . . . , including *procedures* that address
(Cont’d . . .)

2. *MISO cannot have a “contract path” to itself.*

Section 5.2 applies when the two parties, MISO and SPP, have “contract paths to the same entity.” Given that MISO South is now an embedded part of the integrated MISO system, neither MISO nor SPP has a contract path to a “same entity” regarding the flows MISO is placing on SPP’s system. MISO cannot have contract paths “to” itself. A path from MISO Midwest to MISO South is a path from MISO to MISO, not a path from MISO “to” another entity. Similarly, all of SPP’s paths to entities now in the MISO South region (e.g., Entergy, CLECO, etc.) are simply paths “to” MISO. Thus, section 5.2 is inapplicable – it is not the use of contract paths “to” a “same entity” – and cannot support MISO’s use of SPP’s system to reach MISO’s embedded load in the MISO South region.

Additionally, and as discussed in detail below, the commonly accepted use of the term “contract path” refers to a designated path over which parties engage in point-to-point transmission service transactions. This is consistent with the Commission’s own

(. . . cont’d)

parallel path flows [and] ancillary service standards.” *Sw. Power Pool, Inc.*, 106 FERC ¶ 61,110, at P 203 (emphasis added). As to market practices, the Commission said that it expected “some level of standardization of inter-regional market standards and practices, including the coordination and sharing of data necessary for calculation of TTC and ATC, transmission reservation practices, scheduling practices, and congestion management *procedures*.” *Id.* (emphasis added). In a subsequent order regarding the matter, the Commission provided even more detailed direction, instructing the parties to: ensure consistency of AFC and ATC calculations; develop consistent treatments of TRM and CBM; provide details of procedures regarding the type, and timing, of information exchange regarding these values; adopt procedures for coordinating emergencies and restorations; and provide details on notification and coordination of outages affecting inter-regional transmission organization (“RTO”) transfer capability. *Sw. Power Pool, Inc.*, 108 FERC ¶ 61,003, at P 53 (2004), *order on reh’g*, 110 FERC ¶ 61,138 (2005). All of this was accomplished in the JOA. As is apparent, none of these directions in any way suggested, much less dictated, that the parties had to share transmission capacity without compensation.

view, as described in Order No. 890: “Point-to-point service consists of a contract-path with a designated point of receipt and point of delivery.”³⁸ In other words, in order to conduct point-to-point transmission service transactions, the industry has established the notion of a “contract path” to identify the route from the source to the sink of a particular point-to-point transaction.

When MISO dispatches its energy market, it manages its system by matching resources to load in the most efficient, economic, and reliable manner. This market dispatch does not involve use of “contract paths.” Transmission providers do not have contract paths to (or more aptly, within) themselves. When entities in the MISO South region participate in the MISO market, they do so via network transmission service internal to MISO. “Network service *has no identified contract-path.*”³⁹ Thus, section 5.2’s reference to “contract paths” should not apply in the context of MISO’s market dispatch from its own generation to its own load.⁴⁰

³⁸ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,241, at P 1612, *order on reh’g*, Order No. 890-A, 2006-2007 FERC Stats. & Regs., Regs. Preambles ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g and clarification*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

³⁹ Order No. 890 at P 1612 (emphasis added).

⁴⁰ *See Ind. Mich. Power Co.*, 64 FERC ¶ 61,184, at 62,545 (1993) (“In general, utilities transact *with one another* based on a contract path concept.”) (emphasis added).

3. “Contract path” is well understood throughout the electric industry to mean the scheduled point-to-point transmission route for energy as specified pursuant to an agreement.

Reasonable interpretation of commercial agreements requires the Commission to consider trade usage to discern the meaning of terms.⁴¹ As commonly used in the electric industry, a contract path is a designated path over which parties engage in point-to-point transmission service transactions. The North American Electric Reliability Council (“NERC”), in its Glossary of Terms Used in Reliability Standards, defines “contract path” as an “agreed upon electrical path for the continuous flow of electrical power between the parties of an Interchange Transaction.”⁴² An “Interchange Transaction” means “[a]n agreement to transfer energy from a seller to a buyer that crosses one or more Balancing Authority Area boundaries.”⁴³ That is, it is a transfer of energy via a point-to-point transmission transaction. In the case of energy dispatch from the combined resources of the MISO Midwest region to the loads within the MISO South region, there are no “interchange transactions,” as both MISO Midwest and MISO South are part of the single MISO balancing authority.⁴⁴ Because the flow of energy between

⁴¹ See *Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 703 (D.C. Cir. 2010) (“Relying on trade usage of the term is appropriate, as construing terms in light of their commonly understood meaning is a hallmark of reasonable interpretation.”) (citations omitted); see also Restatement (Second) of Contracts § 202(5) (1981) (terms must be interpreted according to trade usage).

⁴² See North American Electric Reliability Corporation, *Glossary of Terms Used in NERC Reliability Standards*, 24 (Jan. 2, 2014), http://www.nerc.com/pa/Stand/Glossary%20of%20Terms/Glossary_of_Terms.pdf.

⁴³ *Id.* at 41.

⁴⁴ MISO established a single balancing authority in 2008. *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,172, at P 471, *order on reh’g*, 123 FERC ¶ 61,297 (2008). MISO South is part of the MISO balancing authority.

MISO Midwest and MISO South does not constitute the “flow of electrical power between the parties to an Interchange Transaction,” the notion of “contract paths” existing between the two MISO sub-regions is inapposite.

The North American Energy Standards Board (“NAESB”) similarly defines “contract path” as “[a] predetermined Transmission Service electrical path between contiguous Transmission Service Providers established for scheduling and commercial settlement purposes that represents the continuous flow of electrical energy between the parties to a transaction.”⁴⁵ A contract path is “*between contiguous Transmission Service Providers.*” It is a path for energy flow “*between the parties to a transaction.*” Here, there are no “transactions” between MISO Midwest and MISO South; rather, service is provided as part of MISO’s single integrated system dispatch. There is only a single Transmission Provider – MISO.

MISO’s own business practices distinguish between flow based services and contract path services. MISO applies “contract path” principles only in the context of transactions involving “non-MISO, External BA Areas that are first-tier BA Areas with physical connections to the MISO.”⁴⁶ As the operating entities that compose MISO South are now embedded *within* MISO, they are neither “non-MISO” areas nor “External BA” areas.

⁴⁵ North American Electric Standards Board, *Wholesale Electric Quadrant Business Practices Standards*, Transmission Loading Relief – Eastern Interconnection Standards – WEQ-008-0.10 (Mar. 11, 2009, with minor corrections applied through Dec. 14, 2009, Version 002.1).

⁴⁶ MISO, *Business Practices Manual for Module B of the Open Access Transmission, Energy and Operating Reserve Markets Tariff* § 4.3 (Oct. 15, 2013), https://www.misoenergy.org/_layouts/MISO/ECM/Redirect.aspx?ID=19208.

4. *The only prior discussion of section 5.2 involved a theoretical, not an actual, arrangement that considered possible service to a third party.*

The parties have not had a single occasion to actually share contract path capacity pursuant to section 5.2 of the JOA. It is unfathomable that a provision that has not been used for the transmission of a single megawatt in the past ten years could be interpreted to permit the vast energy flows between MISO Midwest and MISO South that MISO now relies on section 5.2 to permit.

The “course of conduct” previously described by MISO (submitted by affidavit attached to MISO’s declaratory order request and relied upon by the Commission in its prior order) involved discussions regarding the *theoretical, future* use of section 5.2 under certain assumed facts. There never was any *actual* transaction that relied on section 5.2. Moreover, the theoretical transaction, even if it had later occurred, involved the use of SPP’s capacity to reach *a third-party* – Entergy Arkansas.⁴⁷ This conforms precisely to SPP’s understanding and interpretation of section 5.2: the use of shared capacity to reach a third party. Thus, the parties’ own discussion about section 5.2, and how it might be invoked, after the JOA was signed, involved transmission to a third party, fully supporting SPP’s interpretation of section 5.2.

⁴⁷ See *Sw. Power Pool, Inc.*, 736 F.3d at 998; Monroe Aff. ¶ 11. See also MISO EL11-34 Petition at Exhibit D (Affidavit of Thomas J. Malinger) ¶ 13 (describing “discussions with SPP” held in late 2009 and early 2010, following an ice storm in the spring of 2009 which forced a 122 day outage on the interface on which MISO holds capacity. Mr. Mallinger’s testimony describes the parties’ discussion regarding the availability of section 5.2 *should a similar event occur in the future*).

5. *Other transmission providers in the region also believe the contract path sharing provision does not allow a party to serve its internal load without compensating the other party for use of its transmission system.*

SPP is not the only MISO counterparty that disagrees with the expansive view of the section 5.2 language that MISO attributes to it. Tennessee Valley Authority (“TVA”) had a seams agreement with MISO containing similar language, and MISO and TVA disputed the meaning of the language. TVA believed that the similar language in its seams agreement with MISO did “not allow sharing in the manner contemplated by MISO and that TVA would need to be compensated for the use of its transmission system.”⁴⁸ As a result of their dispute, MISO terminated the seams agreement.

Basin Electric Power Cooperative, Western Area Power Administration, and Heartland Consumers Power District (collectively the “IS Parties”) also disagreed that MISO should be able to use this type of language in its seams arrangements with them, if it was to have the meaning that MISO alleges here.⁴⁹ The IS Parties terminated their use of the seams arrangements with MISO in light of MISO’s incorporation of this language into those seams arrangements.⁵⁰

⁴⁸ Tennessee Valley Authority’s Motion for Leave to Intervene, Docket No. ER11-3281-000, at 3 (Apr. 22, 2011).

⁴⁹ Protest of Basin Electric Power Cooperative, Western Area Power Administration and Heartland Consumers Power District, Docket No. ER11-3281-000, at 19-22 (May 2, 2011).

⁵⁰ *See Sw. Power Pool, Inc.*, 140 FERC ¶ 61,199, at P 10 (2012) (noting Western Area Power Administration’s notification of its intent to terminate); *see also* Answer of Southwest Power Pool, Western Area Power Administration, Basin Electric Power Cooperative and Heartland Consumers Power District to Protests and Comments, Docket ER12-1586-000, at 4 (May 29, 2012) (“Western terminated Seams Service on behalf of the IS Parties in order to avoid having to share its contract path capacity with MISO without compensation.”).

Although SPP has seams agreements with other neighboring systems, it has no arrangements with *any* of its other neighbors to use transmission capacity without compensation.⁵¹ Indeed, as even the Commission has stated, it “has also accepted seams coordination arrangements that do not contain a contract path capacity sharing provision,”⁵² and “the Commission has not required such provisions to be included in all seams agreements.”⁵³ Thus, while FERC requires seams coordination, it has never demanded that parties allow uncompensated use of their transmission facilities.

6. *The context of section 5.2 within the JOA indicates that contract path refers to point-to-point transmission service.*

Confirming the parties’ intended use of the phrase “contract path to the same entity,” the parties placed section 5.2 in a section of the JOA addressing “available flowgate capability calculations,” the purpose of which is to forecast “transmission capability that may be available for use by transmission customers.” Section 5 of the JOA (“Available Flowgate Capability Calculations”), where this provision resides, is entirely about coordinated exchanges of data to enable the parties to know how much capacity is available for selling point-to-point transmission service. It has nothing to do with the right of a party to place energy market flows on the other party’s system.⁵⁴

⁵¹ Monroe Aff. ¶ 12.

⁵² *Sw. Power Pool, Inc.*, 140 FERC ¶ 61,199, at P 102.

⁵³ *Id.*

⁵⁴ *See, e.g.*, JOA § 5.1 (“The exchange of data related to calculation of AFC is necessary to assure reliable coordination, and also to permit either Party to determine if, due to lack of transmission capability, it must refuse a transmission reservation in order to avoid potential overloading of facilities.”).

B. The Flows Occurring on SPP’s System Cannot Be Defended as Ordinary “Loop Flows.”

It is undisputed that MISO only has a single interconnection path of 1,000 MW interconnecting MISO Midwest and MISO South. Yet, as Figure 1 shows, since December 19, 2013, MISO has regularly transmitted energy between MISO Midwest and MISO South well in excess of 1,000 MW.⁵⁵

MISO has argued that, irrespective of section 5.2, any power transfers crossing SPP’s system as a consequence of MISO’s dispatch are unavoidable “loop flows,” which it argues are generally not compensable under Commission policy.⁵⁶ But MISO has never confronted the well-understood principle that “[l]oop flow refers to power flow along an *unintended* path that loops away from the most direct geographic path or contract path.”⁵⁷ Here, we are not dealing with “unintended loop flows” and/or “unavoidable consequence[s] of interconnected utility operations.”⁵⁸ Those quotes might aptly describe flows crossing SPP’s system during times when MISO’s dispatch between MISO Midwest and MISO South is at or below MISO’s interconnection capacity of 1,000 MW. For example, if MISO were dispatching 500 MW between MISO Midwest and MISO

⁵⁵ See *supra* Figure 1 and Monroe Aff. at Exh. No. 4 (documenting MISO’s flows between MISO Midwest and MISO South).

⁵⁶ See, e.g., Joint Answer of Entergy Services, Inc. and the Midcontinent Independent System Operator, Inc., Docket No. ER13-948-000, at 7 (May 8, 2013).

⁵⁷ *PJM Interconnection, L.L.C. v. Pub. Serv. Elec. & Gas Co.*, 132 FERC ¶ 61,221, at P 24 n.41 (2010) (emphasis added), *order on reh’g*, 135 FERC ¶ 61,018 (2011), *aff’d*, *NRG Power Mktg., LLC v. FERC*, 718 F.3d 947 (D.C. Cir. 2013).

⁵⁸ *Am. Elec. Power Serv. Corp.*, 49 FERC ¶ 61,377, at 62,381 (1989).

South and 100 MW unintentionally flowed on SPP's facilities, then the flows could properly be considered "loop flows."⁵⁹

To be clear, SPP has never contested or sought compensation for "loop flows," as conventionally understood. However, when MISO intentionally dispatches more than 1,000 MW between MISO Midwest and MISO South, it is intentionally placing flows on systems other than its own without authorization or reservation. It is these intentional, unauthorized flows that MISO must either stop dispatching or start paying for and reserving transmission service to accommodate. These are not "unintended" loop flows that are an "unavoidable" consequence of MISO's use of its own capacity.⁶⁰

C. The Commission Should Confirm that MISO Must Pay SPP Tariff Penalties for Unreserved Use of SPP's Transmission System.

1. *Commission policy dictates assessment of penalties for all instances in which parties make unreserved use of a transmission system.*

It is the Commission's policy to assess penalties for *all* instances in which parties make unreserved use of a transmission system.⁶¹ In Order Nos. 890 and 890-A,⁶² the Commission established a policy authorizing transmission providers to impose penalty charges for "unreserved use" of the transmission system. A penalty may be imposed whenever a transmission customer exceeds its reserved capacity or does not reserve

⁵⁹ See, e.g., *Ind. Mich. Power Co.*, 64 FERC ¶ 61,184, at 62,545 (1993).

⁶⁰ Indeed, even as the Commission ruled – albeit without proper evidence, as the court has found – that MISO could use section 5.2 to reach internal MISO load, the Commission explicitly declined to address whether MISO may exceed its 1,000 MW interconnection path limitation without compensation, leaving the matter to negotiations, which have failed. See EL11-34 Rehearing Order at P 30 (declining to find whether MISO is limited to 1,000 MW because the petition did not seek guidance on this issue).

⁶¹ Order No. 890 at P 838.

⁶² *Id.* at P 847; Order No. 890-A at P 447.

capacity for what it then uses. The Commission found the imposition of unreserved use penalties as necessary to “help discourage disorderly use of transmission service.”⁶³ The Commission held that “the unreserved penalty regime we articulate in this Final Rule will provide a reasonable incentive to ensure that transmission customers reserve the appropriate level of transmission service without unduly charging a transmission customer for inadvertent unreserved use” and that “penalties are appropriate for all unreserved uses of the system.”⁶⁴

While “unreserved use penalties thus work . . . to reduce incentives to take actions that impair the reliability of the transmission system,”⁶⁵ the Commission’s policy on unreserved use penalties is not limited “to instances where the unreserved use jeopardizes the reliable operation of the transmission system.”⁶⁶ Rather, the Commission declared that:

Unreserved use penalties are intended, in part, to give transmission customers an incentive to reserve and pay for the appropriate level of transmission service so that transmission service is allocated in an orderly fashion. A transmission customer that uses unreserved transmission service requires the transmission provider to take some action to accommodate the additional use of the system. Some penalty is warranted even in those instances when the transmission provider’s accommodations are sufficient to avoid curtailment of transmission service to other transmission customers. Absent a penalty in *all instances*, transmission customers would have an increased incentive to under-reserve transmission service, which would lead to an increase in the likelihood that system reliability would be impaired. In addition, *a transmission customer that uses more transmission service than it has reserved, even in periods when system reliability has not been*

⁶³ Order No. 890 at P 835.

⁶⁴ *Id.* at P 847.

⁶⁵ *Id.* at P 835 n.513.

⁶⁶ *Id.* at P 838.

*impaired, has nonetheless disturbed the orderly allocation of transmission service.*⁶⁷

Thus, to ensure that all instances of unreserved use are penalized, the Commission modified its pro forma open access tariff to provide that “a customer that takes unreserved point-to-point transmission service and does not have a service agreement with the transmission provider is *deemed to have executed* the transmission provider’s form of service agreement for point-to-point service.”⁶⁸ The Commission found that the penalties should be based on “the period of unreserved use.”⁶⁹

The Commission affirmed the unreserved use penalty policy in Order No. 890-A and rejected calls for it “to distinguish between intentional and unintentional unreserved transmission uses and reiterate[d] that *all* unreserved uses will be subject to operational penalties.”⁷⁰ The Commission held that, while “inadvertent unreserved uses . . . may be beyond the [load serving entity’s] control at the moment they occur [,] [t]his does not mean, however, that penalties should not apply to such unreserved uses. Like any customer, the [load serving entity] is able to protect itself against unreserved use penalties by reserving sufficient capacity.”⁷¹ Accordingly, the Commission held that “[i]t is the obligation of the transmission customer, not the transmission provider, to ensure that the customer has reserved the transmission service that it uses.”⁷²

⁶⁷ *Id.* at P 838 (emphasis added).

⁶⁸ *Id.* at P 840 (emphasis added).

⁶⁹ *Id.* at P 840. Of course, the transmission provider may also charge the basic transmission rate for the unreserved use in addition to the penalties. *See* SPP Tariff § 14.5.

⁷⁰ Order No. 890-A at P 447 (emphasis added).

⁷¹ *Id.* at P 451.

⁷² *Id.* at P 452.

2. *SPP properly is assessing MISO penalties for taking unreserved non-firm point-to-point transmission service.*

In accordance with Commission policy to “help discourage disorderly use of transmission service”⁷³ and “to reduce incentives to take actions that impair the reliability of the transmission system,”⁷⁴ SPP is assessing MISO penalties for unreserved use of non-firm point-to-point transmission service. As explained in the affidavit of Carl Monroe, on January 10, 2014, SPP invoiced MISO for the unreserved use of the SPP transmission system beginning with the integration of Entergy on December 19, 2013.⁷⁵ In determining the level of unreserved usage, SPP assessed MISO only for power transfers exceeding MISO’s 1,000 MW of interconnection path capacity between MISO Midwest and MISO South.⁷⁶

SPP treats MISO’s unauthorized power flows as non-firm point-to-point transmission service. MISO is not reserving the service that it is taking and has not applied for firm transmission service. Thus, there is no basis to treat MISO’s excess power transfers as firm, or to accord them higher curtailment priority than reserved and contracted non-firm services.

Accordingly, SPP is calculating the penalty in accordance with SPP Tariff section 14.5 (“Classification of Non-Firm Point-To-Point Transmission Service”), which, in part, provides:

⁷³ Order No. 890 at P 835.

⁷⁴ *Id.* at P 835 n.513.

⁷⁵ Monroe Aff. ¶ 15.

⁷⁶ *Id.* at Exh. No. 3 (Letter from C. Monroe to R. Doying Re: Bill for Unreserved Use of SPP Transmission System).

In the event that a Transmission Customer (including Third-Party Sales by a Transmission Owner) exceeds its non-firm capacity reservation, the Transmission Customer shall pay the following penalty (in addition to the charges for all of the non-firm capacity used): 100% of the Non-Firm Point-To-Point Transmission Service charges under Schedules 8 and 11 for the duration of the period when the additional service was used as specified below not to exceed one month for the amount in excess of such capacity reservation. An excess of one hour or less shall be billed at the charge for weekday deliveries, repeated daily use of unreserved capacity within a seven day period shall increase the duration of the period to a weekly duration and multiple instances of unreserved use during more than one seven day period during a calendar month shall increase the duration of the period to a monthly duration For the amounts exceeding the non-firm capacity reservation, the Transmission Customer must replace losses as required by this Tariff.⁷⁷

SPP is assessing MISO for each megawatt of MISO market flows above 1,000 MW in either direction (e.g., MISO Midwest to MISO South and MISO South to MISO Midwest). Point-to-point transmission service is uni-directional, and, therefore, MISO is taking two point-to-point transmission services from SPP.⁷⁸ Given that this is a violation of the JOA and the SPP Tariff, penalties may be assessed from the date of the violation.⁷⁹

⁷⁷ SPP Tariff § 14.5.

⁷⁸ SPP is assessing MISO for the full amount of flows in excess of 1,000 MW even though some of those flows may travel through other neighboring systems (e.g., AECI or TVA) to reach their destination. This is appropriate because MISO has stated that it is relying solely on its 1,000 MW interconnection capacity and SPP’s transmission system (through the JOA) to serve its loads. However, to the extent MISO reserves transmission service on other neighboring systems to send market flows between its two regions, SPP will make a corresponding reduction in the SPP Tariff assessments. In aggregate, MISO must secure reservations on neighboring systems sufficient to cover its excess flows – i.e., flows above MISO’s interconnection path capacity of 1,000 MWs.

⁷⁹ See 16 U.S.C. § 825h (vesting FERC with authority to “perform any and all acts . . . it may find necessary or appropriate to carry out the provisions of this Act”); *Idaho Power Co.*, 145 FERC ¶ 61,122, at P 16 (2013) (“If [a tariff] violation occurs, the Commission has the tools available to impose remedies, as necessary and appropriate, *from the date on which the tariff violation occurred.*”).

In accordance with Commission policy, as an entity taking unreserved transmission service, MISO is a transmission customer under the SPP Tariff. To ensure that all instances of unreserved use are penalized, SPP is imposing penalties consistent with the Commission's finding that "a customer that takes unreserved point-to-point transmission service and does not have a service agreement with the transmission provider is *deemed to have executed* the transmission provider's form of service agreement for point-to-point service."⁸⁰ SPP has the authority under its Tariff, and under Commission precedent and policy, to assess MISO penalties for unreserved use of SPP's transmission system. Accordingly, the Commission should confirm that MISO must pay the penalties invoiced by SPP.

3. *SPP is contemporaneously proposing a reasonable alternative that will treat MISO's excess flows comparably to other non-firm services.*

SPP has no interest in denying MISO access to its system, nor does SPP wish to continue in perpetuity assessing MISO penalties for unreserved use. From an operational perspective, SPP prefers to know ahead of time the amount of flows MISO plans to place on SPP's system so that SPP may ensure orderly use of its transmission system. Thus, although "[i]t is the obligation of the transmission customer, not the transmission provider, to ensure that the customer has reserved the transmission service that it uses,"⁸¹ SPP is submitting, contemporaneously with this filing in Docket No. ER14-1174-000, an unexecuted service agreement for non-firm point-to-point transmission service under which MISO must reserve and pay for transmission service. As explained more fully in

⁸⁰ Order No. 890 at P 840 (emphasis added).

⁸¹ Order No. 890-A at P 452.

that filing, the Commission should accept the service agreement, subject to refund and the outcome of the hearing in this proceeding.⁸²

IV. IN THE ALTERNATIVE, IF THE COMMISSION DETERMINES THAT JOA SECTION 5.2 DOES ALLOW MISO TO USE SPP'S TRANSMISSION SYSTEM WITHOUT COMPENSATION, THEN THE JOA IS NO LONGER JUST AND REASONABLE AND SHOULD BE AMENDED TO INCLUDE SPP'S PROPOSED SERVICE AGREEMENT TO PROVIDE COMPENSATION TO SPP

If, after conclusion of the hearing, the Commission determines that JOA section 5.2 currently permits MISO to use SPP's transmission system, free of charge, to dispatch market flows between the MISO Midwest and MISO South regions in excess of MISO's actual interconnection capacity between the two regions, then the Commission should find, pursuant to section 206 of the FPA, that the JOA is no longer just and reasonable. Given the significant circumstantial changes since the JOA was executed, the Commission can no longer find that section 5.2, so interpreted, is just, reasonable, and not unduly discriminatory.

A. The JOA Is Unjust, Unreasonable, and Unduly Discriminatory if Interpreted to Permit Uncompensated, Unreserved Flows Between MISO Midwest and MISO South.

As the Commission has already determined, "the transfer of control of the Entergy transmission facilities to MISO *necessitates* the renegotiation of the MISO-SPP JOA."⁸³ This finding strongly supports the notion that the JOA, if interpreted to permit MISO to send unreserved, uncompensated market flows over SPP's transmission system to reach the newly integrated MISO South region, is not just and reasonable. Moreover, the JOA, so interpreted, is unduly discriminatory. No other entity's use of the SPP

⁸² A copy of this agreement is included as Attachment B.

⁸³ *ITC Holdings Corp.*, 143 FERC ¶ 61,257, at P 129 (emphasis added).

transmission system, particularly in the volumes that MISO is using, avoids contributing to the revenue requirements and operating costs of the SPP transmission system.

Fundamental cost-causation principles bear this out. Beneficiaries of a utility's facilities or services must shoulder the costs associated with such facilities and services; the Commission may not approve a pricing structure that does not assess costs based on the burdens imposed or benefits derived.⁸⁴ Nor may the Commission, in discharging its FPA responsibilities, lawfully grant an undue preference to one entity over another.⁸⁵

Yet that is precisely what MISO would have the Commission do. Clearly, MISO is benefiting from the use of SPP's transmission facilities. Indeed, MISO is on record acknowledging its planned transfers of *at least 4,000 megawatts* between MISO Midwest and MISO South, using SPP capacity for the bulk of these transfers, in order to bring the benefits of MISO's market to Entergy.⁸⁶ Every other customer desiring to use SPP's transmission system is required to execute a service agreement, secure a transmission reservation, and schedule and pay for service. Because it is blatantly discriminatory to have these requirements apply to every other user of the SPP system, while allowing MISO's *free and unlimited* use of SPP's facilities, any continued reliance on section 5.2

⁸⁴ *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 476-77 (7th Cir. 2009).

⁸⁵ *See* 16 U.S.C. § 824d(b).

⁸⁶ *See* In The Matter Of A Show Cause Order Directed To Entergy Arkansas, Inc. Regarding Its Continued Membership In The Current Entergy System Agreement, Or Any Successor Agreement Thereto, And Regarding The Future Operation And Control Of Its Transmission Assets, Docket No. 10-011-U, Transcript at 247 (Ark. PSC, Sept. 14, 2010) ("APSC Transcript"); Entergy-Regional State Committee ("ERSC") Meeting, Sept. 9, 2010, Transcript at 156, 187-89 ("ERSC Transcript"). Excerpts from these transcripts were attached to the Motion to Intervene and Protest of Southwest Power Pool, Inc., Docket No. EL11-34-000 (May 9, 2011) ("SPP EL11-34 Motion/Protest"), and are again attached hereto as Attachment C. MISO's representation of member benefits attributable to the use of SPP's system are described in the APSC Transcript at 250.

to support MISO's post-integration power flows is unjust, unreasonable, and unduly discriminatory.

In this regard, the MISO-Entergy integration constitutes significantly different and changed circumstances from when the JOA was entered. Recall that, pre-integration, there was not *a single occasion* in which either party made use of section 5.2. Now, however, MISO is making use of SPP's system on a regular and continuous basis to transfer significant power flows between MISO Midwest and MISO South well in excess of MISO's 1,000 MW of interconnection capacity between those regions.⁸⁷ Indeed, it was anticipation of these significant, post-integration changes, and the planned regular and expanded reliance on section 5.2, that prompted MISO to petition the Commission for an order confirming MISO's usage rights.⁸⁸ The bottom line, as the Commission itself found, is that the size and scope of the operational changes brought about by the MISO-Entergy integration require that the terms of the JOA be revisited.⁸⁹

If the Commission interprets the JOA to permit MISO's flows between MISO Midwest and MISO South, the contract path sharing provision unjustly and unreasonably

⁸⁷ Reported flows have even exceeded the 2000 MW limit prescribed under the Operational Reliability and Coordination Agreement ("ORCA") accepted by the Commission to address reliability issues associated with the MISO South integration. *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032 (2013). The ORCA is not the subject of this complaint. That agreement does not address the legal rights to use SPP's or others' transmission systems or compensation therefore. *See* ORCA § 1(c).

⁸⁸ MISO EL11-34 Petition at 3-4 (noting anticipated need to rely on SPP transmission capacity for purposes of integrating Entergy as a MISO transmission-owing member).

⁸⁹ *See supra* notes 15-20 and accompanying text. As already noted, there is no requirement that a seams agreement include a contract path sharing provision. *Sw. Power Pool, Inc.*, 140 FERC ¶ 61,199, at P 102 ("The Commission has [] accepted seams coordination arrangements that do not contain a contract path capacity sharing provision . . .").

provides benefits only to MISO to accommodate its integration and operation of the vast Entergy system. SPP receives no corresponding benefits from a contract path sharing provision interpreted to allow the type of use MISO is making of the transmission system because only MISO has weakly interconnected system loads. SPP has its own physical capacity to serve all of its loads. MISO members get to use SPP's system without compensation, while SPP customers obtain no similar benefit. Continuation of contract path sharing under this provision therefore is unjust and unreasonable.

Even when MISO and PJM included a contract path sharing provision in their JOA, they specifically reserved on the issue of compensation regarding flows impacting their respective systems. The transmittal letter accompanying the MISO/PJM JOA filing made clear that neither MISO nor PJM waived any right to seek compensation for any incremental flows crossing their systems.⁹⁰ In that case, the parties reserved their rights to seek compensation for "loop flow." As discussed, here we are not dealing with unintended, unavoidable "loop" flows, but rather intentional, unscheduled placement of flows on another's system. Adding a compensation mechanism for such flows is just and reasonable.

B. Incorporation of a Service Agreement for Reservations and Compensation for Flows Between MISO Midwest and MISO South is Just and Reasonable and Not Unduly Discriminatory.

Despite heeding the Commission's strong encouragement that the parties pursue renegotiation of the JOA, both parties now recognize that they are at impasse.⁹¹ Accordingly, if the Commission declines to grant SPP's Complaint, and determines that

⁹⁰ Submittal of Midwest Independent Transmission System Operator, Inc. and PJM Interconnection, L.L.C., Docket No. ER04-375-000, at 24-25 (Dec. 31, 2003).

⁹¹ See Monroe Aff. at Exh. No. 2.

the JOA authorizes MISO's use of SPP's system without compensation, then, pursuant to section 206 of the FPA, SPP requests that the Commission amend the JOA to incorporate the service agreement being filed contemporaneously with this Complaint to provide a compensation mechanism. A copy of the service agreement is appended hereto as Attachment B.

Specifically, SPP proposes to embed the compensation mechanism in a non-firm point-to-point transmission service agreement that contains terms and conditions necessary to accommodate the unique circumstances under which MISO will take service over the SPP system (referred to herein as the "MISO Service Agreement"). The circumstances are unique in two basic ways. First, because the actual flows for which MISO will compensate SPP under the service agreement will arise instantaneously in real-time as MISO dispatches its market resources transferring energy between MISO Midwest and MISO South, MISO will not schedule transfers of energy. Instead, in lieu of scheduling service, real-time energy transfers in each direction between MISO Midwest and MISO South will be monitored and calculated pursuant to the terms of the MISO Service Agreement.⁹² Second, the service provided under the MISO Service Agreement will facilitate energy transfers that cross SPP's transmission system, but that both originate and terminate in the MISO balancing authority area. Therefore, the standard scheduling protocols for point-to-point through-and-out transmission service

⁹² Attachment B, MISO Service Agreement § 4.0. While MISO will not be required to schedule service, it will be required to reserve service. *Id.* Requiring MISO to reserve service allows SPP to know ahead of time the amount of flows MISO plans to place on SPP's system so that SPP may ensure orderly use of its transmission system.

used for transfers from one balancing authority area to another different balancing authority area are unusable here.⁹³

Because MISO will not schedule service, the MISO Service Agreement lays out how real-time energy transfers in each direction between MISO Midwest and MISO South will be determined. Specifically, SPP proposes that MISO monitor and provide to SPP “the actual MISO Midwest region to and from the MISO South region real-time intra-Balancing Authority Area generation to load (and also taking into account export and import transactions) dispatch flow.”⁹⁴ The “dispatch flow calculation will be based on the difference between generation and load in each of the MISO Midwest and MISO South regions with an adjustment for interchange transactions with the non-MISO Balancing Authority Areas interconnected to the regions.”⁹⁵

The dispatch flow methodology proposed in the MISO Service Agreement is just and reasonable as it is essentially the same methodology for determining dispatch flow between MISO Midwest and MISO South that MISO proposed in the ORCA, and the Commission accepted, in *Midcontinent Independent System Operator, Inc.*⁹⁶ The words used in the MISO Service Agreement to describe the Dispatch Flow calculation are virtually the same as those that are used in the ORCA.⁹⁷ Because MISO already is

⁹³ See *PJM Interconnection, L.L.C.*, 132 FERC ¶ 61,221 (2010) (accepting non-conforming service agreements for unscheduled energy flows that originated in one RTO, flowed through another RTO’s balancing authority area, and then back into the originating RTO’s balancing authority area).

⁹⁴ Attachment B, MISO Service Agreement § 6.0(A).

⁹⁵ *Id.* § 6.0(B).

⁹⁶ 145 FERC ¶ 61,032 (2013).

⁹⁷ Compare Attachment B, MISO Service Agreement §§ 6.0(A) and 6.0(B) and ORCA § 2. The MISO Service Agreement also sets forth the assumptions to be
(Cont’d . . .)

making the same dispatch flow calculations under the ORCA, the MISO Service Agreement does not require MISO to make and provide any calculations that it has not already demonstrated it is capable of making and providing.

The MISO Service Agreement explains how the Assessable Flows (the flows for which MISO will be charged under the agreement) are determined.⁹⁸ SPP will identify when transfers of energy in each direction between MISO Midwest and MISO South exceed MISO's Base Transmission Capacity. For each hour, the average amount of energy transferred in each direction between MISO Midwest and MISO South that exceeds MISO's Base Transmission Capacity as expressed in megawatts, shall constitute the Assessable Flows for the hour in each direction.⁹⁹

Assessable Flows that exceed MISO's "Base Transmission Capacity"¹⁰⁰ will be subject to the charges under the MISO Service Agreement. Currently, MISO's Base Transmission Capacity is the direct 1,000 MW physical path that connects the MISO Midwest and MISO South regions. As earlier discussed, when MISO dispatches 1,000 MW or less between MISO Midwest and MISO South, any resulting flows on SPP's

(. . . cont'd)

used in the Dispatch Flow calculation. *See* Attachment B, MISO Service Agreement § 6.0(C). While the assumptions are not specifically included in the ORCA, the parties to the ORCA have adopted these assumptions and they are currently used by MISO in the ORCA Dispatch Flow calculations.

⁹⁸ *Id.*, MISO Service Agreement § 7.0.

⁹⁹ *Id.*

¹⁰⁰ "Base Transmission Capacity" shall be determined "by summing [MISO's] right to transfer energy pursuant to either (i) Transmission Customer's capacity of a direct physical connection that is in service between MISO-Midwest and MISO-South; or (ii) a reservation of a specified amount of Point-To-Point Transmission Service on a Transmission Provider's OASIS enabling transfers between MISO-Midwest and MISO-South." *Id.*, MISO Service Agreement § 5.0(B).

system properly could be considered loop flows for which MISO should not be charged.¹⁰¹ However, when MISO dispatches more than 1,000 MW between MISO Midwest and MISO South, it intentionally is placing unscheduled flows on systems other than its own for which it must pay and reserve transmission service to accommodate the use of SPP's system, like any other user of SPP's system.¹⁰²

The MISO Service Agreement specifies that the rate MISO will pay for such service will be the rate set forth in Schedule 8 (Non-Firm Point-To-Point Transmission Service) of the SPP Tariff and all other SPP Tariff specified charges for non-firm point-to-point service. The MISO Service Agreement further specifies that the zonal rates that will apply to service under the agreement will be the rates in the zones interconnected with MISO Midwest and MISO South with the lowest zonal rates. Using the zones with the lowest rates is consistent with section 1 of Schedule 8 of the SPP Tariff, which provides that for non-firm point-to-point transmission service where both the generation source and the load are located outside of the SPP Region, the lowest zonal rate will apply where there is more than one zone interconnected to the balancing authority area external to the SPP Region.¹⁰³

The MISO Service Agreement also addresses the calculation of losses. It specifies that SPP will use the Point of Receipt ("POR") of Ameren and Point of Delivery ("POD") of Entergy for service in the direction of MISO Midwest to MISO South and

¹⁰¹ See *supra* discussion at Section III.B.

¹⁰² As noted earlier, to the extent MISO reserves transmission service on other neighboring systems to send market flows between its two regions, SPP will make a corresponding reduction in the SPP Tariff assessments. In aggregate, MISO must secure reservations on neighboring systems sufficient to cover its excess flows – i.e., flows above MISO's interconnection path capacity of 1,000 MWs.

¹⁰³ See SPP Tariff, Schedule 8 § 1.

POR of Entergy and POD of Ameren for service in the direction of MISO South to MISO Midwest.¹⁰⁴ Ordinarily point-to-point service is scheduled with a POR and POD, but, as noted, here the service will not be scheduled but rather simply will be calculated in real-time; therefore, to determine losses, a specified POR and POD are needed and the Entergy and Ameren points best correspond to the service being provided.

Finally, the MISO Service Agreement specifies that Assessable Flows in each direction in excess of transmission customer's OASIS reservation(s) will be subject to penalties under section 14.5 of the SPP Tariff.¹⁰⁵ While under the MISO Service Agreement, MISO will not schedule service, like all other customers it still will need to reserve the service it intends to use. If it does not, charging penalties for unreserved use is fully consistent with Commission policy under Order Nos. 890 and 890-A.¹⁰⁶

MISO should not be allowed unfettered unauthorized use of SPP's system to facilitate its transfer of energy to reach internal MISO load without compensating SPP for such usage. Therefore, if the Commission finds that the JOA currently authorizes MISO to use SPP's system without compensation as MISO claims, then, pursuant to section 206 of the FPA, SPP requests that the Commission find that the JOA is unjust and unreasonable and further find that an amendment to the JOA to incorporate the MISO Service Agreement is just and reasonable and not unduly discriminatory. The MISO Service Agreement will provide an appropriate mechanism for MISO to take and pay for transmission service to integrate the Entergy companies and is just and reasonable.

¹⁰⁴ Attachment B, MISO Service Agreement § 9.0.

¹⁰⁵ *Id.*, MISO Service Agreement § 8.0. Section 14.5 of the Tariff specifies the penalties that apply to all non-firm point-to-point transmission customers.

¹⁰⁶ *See supra* discussion at Section III.B.

Pending its investigation in this docket, the Commission should accept the MISO Service Agreement, subject to refund, and with a refund effective date of the day after this filing.¹⁰⁷

V. MOTION TO CONSOLIDATE AND REQUEST FOR HEARING PROCEDURES

The Commission should consolidate: (1) this Complaint; (2) the remand of *SPP v. FERC*; and (3) the proceedings concerning the proposed MISO Service Agreement for MISO to reserve and take service on SPP's system. Each of these proceedings concerns the same underlying issue – the interpretation of JOA section 5.2. Resolution of this issue in a single proceeding would “promote efficient use of the resources of the Commission and the parties.”¹⁰⁸ Accordingly, given the common questions of law and fact, it would be in the public interest to consolidate these proceedings and hold settlement and hearing procedures to take evidence, as directed by the court in *SPP v. FERC*.¹⁰⁹

In this regard, the Commission should set for hearing, and evaluate the extrinsic evidence regarding, the parties' intentions in using the term “contract path” and the commercial context in which the JOA was negotiated. The Commission must consider the testimony of the parties' negotiating principals as well as “all relevant course of dealing and usage of trade evidence.”¹¹⁰ Evidence regarding the parties' negotiating

¹⁰⁷ 16 U.S.C. § 824e(b).

¹⁰⁸ *Big West Oil Co. v. Frontier Pipeline Co.*, 95 FERC ¶ 61,229, at 61,794 (2001).

¹⁰⁹ *Columbus S. Power Co.*, 45 FERC ¶ 61,152, at 61,463 (1988).

¹¹⁰ *Chase Manhattan Bank v. First Marion Bank*, 437 F.2d 1040, 1048 (5th Cir. 1971). *See also Colo. Interstate Gas Co. v. FERC*, 599 F.3d 698, 703 (D.C. Cir. 2010) (“Relying on the trade usage of the term is appropriate, as construing terms (Cont'd . . .)

intentions is highly probative when considering the meaning of an ambiguous contract,¹¹¹ and evidence of course of dealing and usage of trade is useful “to permit analysis of the written agreement in the proper commercial setting.”¹¹² A proper and thorough investigation of these matters requires an on-the-record evidentiary hearing so that the parties’ positions can be explored through discovery and the credibility of witnesses can be examined, particularly with regard to testimony concerning contractual intent and course of conduct.¹¹³

Notwithstanding the foregoing, the Commission may consider referring the disputed issues to settlement judge proceedings. Under this approach, which would entail holding formal hearing procedures in abeyance, all affected parties would be provided an opportunity to participate. The Commission has clearly indicated that the JOA must be re-examined and has signaled a strong preference for a negotiated resolution. While it is true that MISO and SPP have been unable to resolve their differences through negotiation, the vetting of positions before an impartial settlement judge, in a structured, neutral environment, could promote more productive exchanges between the parties.

(. . . cont’d)

in light of their commonly understood meaning is a hallmark of reasonable interpretation.”) (citations omitted).

¹¹¹ See *Sw. Elec. Coop. v. FERC*, 347 F.3d 975, 983 (D.C. Cir. 2003); see also *Cajun Elec. Power Coop. v. FERC*, 924 F.2d 1132, 1137 (D.C. Cir. 1991).

¹¹² *Chase Manhattan Bank*, 437 F.2d at 1047. See also *Colo. Interstate Gas Co.*, 599 F.3d at 703.

¹¹³ See, e.g., *Doswell Ltd. P’ship*, 113 FERC ¶ 61,003 (2005) (consideration of matters involving contractual intent necessitates initiation of formal evidentiary hearings).

VI. REQUEST FOR FAST TRACK TREATMENT

Given the significant intertwining of issues requiring prompt attention, SPP requests that the Commission consider this Complaint under its fast track procedures, 18 C.F.R. § 385.206(h). SPP requests fast track treatment to enable the Commission to issue an order setting this Complaint for hearing contemporaneously with an order accepting, subject to refund, the transmission service agreement under which MISO may properly reserve and take service on SPP's system. Further, MISO already is using SPP's transmission system based on its unilateral interpretation of the JOA and has refused SPP's request that it cease its unlawful dispatch. Fairness to all others that use and pay for the use of the SPP transmission system compels a need for fast track processing of this complaint.

VII. RULE 206 REQUIREMENTS

A. Rule 206(b)(1): Clearly identify the action or inaction which is alleged to violate applicable statutory standards or regulatory requirements;

As discussed, MISO is intentionally and regularly violating SPP's Tariff and the JOA through its unauthorized and unreserved use of SPP's transmission system. If the Commission determines that MISO's actions do not violate the SPP Tariff and JOA, then the JOA is unjust, unreasonable and unduly discriminatory by failing to provide SPP compensation for the use of SPP's system.

B. Rule 206(b)(2): Explain how the action or inaction violates applicable statutory standards or regulatory requirements;

The legal bases for this Complaint are set forth in detail in sections III and IV above.

C. Rule 206(b)(3): Set forth the business, commercial, economic or other issues presented by the action or inaction as such relate to or affect the complainant;

MISO's failure to compensate SPP for use of SPP's transmission system on terms and conditions comparable to service taken by other users of the SPP system unjustly deprives SPP (and its transmission owners) of transmission revenues and provides MISO with an undue preference and advantage over other entities using SPP's transmission system.

D. Rule 206(b)(4): Make a good faith effort to quantify the financial impact or burden (if any) created for the complainant as a result of the action or inaction;

SPP complies with this requirement by measuring the energy transfers resulting from MISO's improper action and assessing penalties for MISO's unreserved use of SPP's transmission system.

E. Rule 206(b)(5): Indicate the practical, operational, or other nonfinancial impacts imposed as a result of the action or inaction, including, where applicable, the environmental, safety or reliability impacts of the action or inaction;

As discussed in Section III.C, MISO's unauthorized and unreserved use of SPP's transmission system prevents SPP from orderly use of its transmission system.

F. Rule 206(b)(6): State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum;

The issues presented in this Complaint are also at the heart of the proceedings on remand of *SPP v. FERC*, in Docket No. EL11-34, and provide the foundation for the unexecuted MISO Service Agreement that SPP is filing contemporaneously with this Complaint in Docket No. ER14-1174-000, which requires MISO to reserve transmission capacity and compensate SPP for the use of SPP transmission system.

G. Rule 206(b)(7): State the specific relief or remedy requested, including any request for stay or extension of time, and the basis for that relief;

SPP requests that the Commission find that JOA section 5.2 does not permit MISO to use SPP's transmission system to reach internal MISO load without compensating SPP for such usage. SPP recognizes that the Commission will initiate formal evidentiary hearings to ascertain the intentions of the parties. Despite failed attempts to reach a negotiated resolution, SPP is amenable to engaging in formal Commission settlement procedures while the hearings are held in abeyance.

H. Rule 206(b)(8): Include all documents that support the facts in the complaint in possession of, or otherwise attainable by, the complainant, including, but not limited to, contracts and affidavits;

See attachments and exhibits.

I. Rule 206(b)(9): State whether the Enforcement Hotline, Dispute Resolution Service, tariff-based dispute resolution mechanisms, or other informal dispute resolution procedures were used, or why these procedures were not used;

As discussed, SPP attempted to engage MISO in negotiations regarding compensation for MISO's use of SPP's transmission system. MISO rejected all SPP proposals and did not offer a counterproposal. Negotiations then reached impasse. In the circumstances, the Commission's various informal dispute resolution services would not assist in remedying the situation, but SPP believes settlement judge procedures could be helpful.

J. Rule 206(b)(10): State whether the issues presented are pending in an existing Commission proceeding or a proceeding in any other forum in which the complainant is a party, and if so, provide an explanation why timely resolution cannot be achieved in that forum; and

Many of the issues presented in this Complaint are present before the Commission on remand of *SPP v. FERC* in Docket No. EL11-34. SPP is requesting that the Commission institute hearing procedures on remand, as directed by the court, and

consolidate that proceeding with this Complaint and the unexecuted MISO Service Agreement filed in Docket No. ER14-1174-000.

K. Rule 206(b)(11): Explain with respect to requests for Fast Track processing pursuant to section 385.206(h), why the standard processes will not be adequate for expeditiously resolving the complaint.

Given that the issues presented in this Complaint are so intertwined with the issues providing a foundation for the unexecuted MISO Service Agreement filed under section 205 of the Federal Power Act in Docket No. ER14-1174-000, SPP requests fast track treatment so that the Commission may issue an order setting this Complaint for hearing contemporaneously with an order accepting, subject to refund, the transmission service agreement under which MISO may properly reserve and take service on SPP's system. Standard processes also would not timely resolve MISO's uncompensated and unauthorized use of SPP's transmission system, which commenced unilaterally by MISO on December 19, 2013.

VIII. COMMUNICATIONS

All correspondence and other communications regarding this Complaint should be directed to:

Michael B. Riley*
Associate General Counsel
Nicole Wagner
Manager, Regulatory Policy
Southwest Power Pool, Inc.
415 North McKinley, #140 Plaza West
Little Rock, AR 72205
Telephone: 501-688-3372
501-688-1642
Fax: 501-482-2022
michael.b.riley@spp.org
jwagner@spp.org

Barry S. Spector*
Jeffrey G. DiSciullo
Wright & Talisman, P.C.
1200 G Street, N.W., Suite 600
Washington, DC 20005-3802
Telephone: (202) 393-1200
Fax: (202) 393-1240
spector@wrightlaw.com
disciullo@wrightlaw.com

* Designated for inclusion on the Commission's official service list for this docket.

IX. CONCLUSION

For the foregoing reasons, the Commission should grant the Complaint in its entirety and consolidate the Complaint with the proceeding on remand of *SPP v. FERC* and the proceeding concerning the unexecuted service agreement filed contemporaneously with this Complaint in Docket No. ER14-1174-000.

Respectfully submitted,

/s/ Barry S. Spector

Barry S. Spector

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Washington, DC 20005-3802

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spector@wrightlaw.com

Counsel for

Southwest Power Pool, Inc.

January 28, 2014

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southwest Power Pool, Inc.,
Complainants

v.

Docket No. EL14-__

Midcontinent Independent System
Operator, Inc.,
Respondents

NOTICE OF COMPLAINT

()

Take notice that on January 28, 2014, Southwest Power Pool, Inc. (“SPP”) filed a formal complaint against Midcontinent Independent System Operator, Inc. (“MISO”) pursuant to sections 206 and 306 of the Federal Power Act alleging that MISO is violating the Joint Operating Agreement (“JOA”) between SPP and MISO and SPP’s Open Access Transmission Tariff. Alternatively, SPP requests that the Commission find that the JOA is not longer just, reasonable, and not unduly discriminatory to the extent it does not provide a mechanism by which SPP may assess charges for MISO’s use of the SPP transmission system.

SPP certifies that copies of the complaint were served on the contacts for Midcontinent Independent System Operator, Inc. as listed on the Commission’s list of Corporate Officials.

Any person desiring to intervene or to protest this filing must file in accordance with Rules 211 and 214 of the Commission’s Rules of Practice and Procedure (18 C.F.R. 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a notice of intervention or motion to intervene, as appropriate. The Respondent’s answer and all interventions, or protests must be filed on or before the comment date. The Respondent’s answer, motions to intervene, and protests must be served on the Complainants.

The Commission encourages electronic submission of protests and interventions in lieu of paper using the “eFiling” link at <http://www.ferc.gov>. Persons unable to file electronically should submit an original and 14 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for review in the Commission’s Public Reference Room in Washington, D.C. There is an “eSubscription” link on the web site that enables subscribers to receive email notification when a document is added to a subscribed docket(s). For assistance

with any FERC Online service, please email FERCOnlineSupport@ferc.gov, or call (866) 208-3676 (toll free). For TTY, call (202) 502-8659.

Comment Date: 5:00 pm Eastern Time on (insert date).

Kimberly D. Bose
Secretary

Attachments

Attachment A

and Manager of Information Technology. I am a professional engineer registered in the State of Missouri.

4. The purpose of my affidavit is to provide information relevant to the complaint filed by SPP in this proceeding seeking compensation for MISO's unauthorized use of SPP's transmission system. I will explain, contrary to MISO's stated position, that section 5.2 of the JOA provides no authority for these flows.

II. ACCOUNT OF THE SECTION 5.2 DISPUTE

5. The background of the section 5.2 dispute is set forth in SPP's complaint. As relevant here, MISO, in 2011, petitioned the Federal Energy Regulatory Commission ("Commission") for a declaratory order confirming MISO's right to rely on section 5.2 of the JOA to integrate anticipated new load resulting from the planned integration of Entergy into MISO. The Commission granted MISO's petition, but recognized the need for the JOA to be renegotiated in light of Entergy's planned integration. The U.S. Court of Appeals for the D.C. Circuit has since vacated and remanded the Commission's orders. On December 19, 2013, the Entergy operating companies were integrated into MISO as the newly-constituted "MISO South" region. Since that time, MISO has been dispatching its market to serve the incremental load in MISO South by imposing significant power flows on SPP's transmission system. Notwithstanding the court's decision, MISO maintains that these flows are authorized pursuant to section 5.2, without limitation, without compensation to SPP, without any requirement of MISO to secure a reservation, and without the need to enter into a service agreement with SPP.

III. NEGOTIATION OF THE JOA AND THE MEANING OF SECTION 5.2

6. As I previously explained in the affidavit that accompanied SPP's Answer to the MISO Petition for Declaratory Order, MISO is interconnected with Entergy only via an Interchange Agreement governing the shared use of a single transmission line and a set of transformers between the systems of Ameren Corporation ("Ameren"), a MISO transmission owner, Associated Electric Cooperative, Inc. ("AECI"), and Entergy. As a result solely of this Interchange Agreement, MISO currently has the right to use 1,000 megawatts of the capacity of these facilities to reach Entergy. Effective December 19, 2013, MISO integrated the approximately 27,000 megawatts of load now in MISO South, making use of the SPP system – and its interconnections with Entergy – in a manner never contemplated by SPP.

7. At the time of the execution of the JOA, SPP had no intention or idea whatsoever of allowing MISO to integrate a distant, large utility system like Entergy's using SPP's transmission capacity and interconnections to that distant system. In fact, at the time of the execution of the JOA, MISO had only approximately 1,600 megawatts of interconnections with SPP. The current, approximately 4,900 megawatts of additional capacity between MISO and SPP exists only because of the subsequent addition of Nebraska utilities to SPP and the addition of MidAmerican Energy to MISO, which occurred years after the JOA was executed. SPP could not have expected thousands of megawatts of energy from MISO market flows to traverse the SPP system based on the signing of the JOA, when there was only a limited 1,600 megawatt interconnection with MISO at the time. Equally obvious is that neither party could have had in mind the addition of the approximately 27,000 megawatt MISO South system at the time of the execution of the JOA.

8. MISO cites to section 5.2 of the JOA as permitting the use of the SPP system to integrate Entergy. It provides:

If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties. This will not create new contract paths for either Party that did not previously exist. SPP will not be able to deal directly with companies with which it does not physically or contractually interconnect and the Midwest ISO will not be able to deal directly with companies with which it does not physically or contractually interconnect.

9. I recall internal discussions at SPP about the language of section 5.2, and the import of the term “contract paths to the same entity.” Based on those discussions, SPP understood that “contract paths” from MISO and SPP “to other entities” was intended to describe the ability of either party to conduct point-to-point transmission transactions to and from third-party systems that were not a part of either MISO or SPP. In other words, we viewed this provision as enabling the parties to provide transmission service to third-party systems based on the combined contract path limits of the MISO and SPP systems to that third-party system, rather than the individual contract path limit of a party. We certainly had no idea that MISO understood, and would later claim, that the provision could serve as the basis of allowing MISO unlimited, unreserved use of SPP’s transmission capacity to operate a market including both MISO’s existing system and a large new member like Entergy, without compensation, without reserved capacity, and without a service agreement.

10. In the litigation that ensued in Docket No. EL11-34, MISO argued that its interpretation of section 5.2 was consistent with how MISO and PJM implemented a similar provision of the JOA between MISO and PJM. I cannot speak to that agreement. SPP was not a party to the negotiations between MISO and PJM, nor was it involved in

any decisions between MISO and PJM about how to implement their agreement. Having not been privy to those discussions, they did not contribute to SPP's understanding of section 5.2.

11. I was also made aware, in the Docket No. EL11-34 proceedings, of MISO's reference to discussions between MISO and SPP regarding the possible use of section 5.2 following an ice storm in early 2009 that caused an outage on the interface on which MISO holds its 1,000 MWs of capacity pursuant to the Interchange Agreement described above. I should emphasize that these discussions concerned the possible *future* invocation of section 5.2 under theoretical assumptions and that no actual prior use of section 5.2 ever took place. Moreover, the theoretical arrangements discussed at the time involved potential use of section 5.2 to deliver energy to Entergy Arkansas (a third-party entity system at the time), consistent with SPP's understanding of the import of section 5.2. The theoretical arrangements did not involve, and could not have involved, use of shared contract path capacity to reach MISO's designated internal load (Ameren) connected to the Entergy Arkansas system, inasmuch as SPP's contract path terminated at the interconnection with Entergy Arkansas; how the energy might get delivered to the MISO load would necessarily be under other arrangements by and between MISO and Entergy Arkansas and *not* pursuant to section 5.2.

12. Although SPP has seams agreements with two other neighboring systems, it has no arrangements with any of its neighbors to use each other's transmission capacity without compensation.

IV. ATTEMPTS TO RENEGOTIATE THE JOA AND NOTICE OF UNAUTHORIZED USE

13. On several occasions the Commission has instructed SPP and MISO to renegotiate the JOA in the wake of the MISO-Entergy integration. SPP's multiple attempts to engage MISO in such renegotiations have failed and the parties agree that they are at impasse.

14. Following the court's vacating of the Commission's interpretation of section 5.2, and in anticipation of the MISO-Entergy integration becoming effective December 19, 2013, SPP contacted MISO seeking assurance that MISO would refrain from any flows of energy between the MISO Midwest region and the new MISO South region in excess of MISO's 1,000 MW contractual tie capacity between the two regions.¹ SPP also informed MISO that in the event MISO's flows between the regions exceeded 1,000 MW, "SPP will consider MISO to have made unauthorized, unreserved use of the SPP transmission system subject to all applicable SPP tariff charges and penalties."² In a letter dated December 12, 2013, MISO replied by indicating that it would not provide the assurance requested by SPP and that it did not agree that its market dispatch was subject to the 1,000 MW limitation claimed by SPP.³ MISO recognized that "[a] dispute continues to exist regarding this issue" and that "both parties acknowledged that we had bargained to impasse."⁴

¹ See Exh. No. 1 (SPP December 9, 2013 Letter).

² See *id.*

³ See Exh. No. 2 (MISO December 12, 2013 Letter)

⁴ See *id.*

V. POST-INTEGRATION FLOWS ON SPP

14. Immediately following the December 19, 2013 integration of Entergy, MISO began sending energy flows between MISO Midwest (i.e., the original MISO region, pre-Entergy integration) and MISO South, in both directions, in excess of the 1,000 MW direct physical connection that MISO has between those regions. Despite requests to curb these flows from several affected systems, including SPP, MISO continues to dispatch its system at levels far exceeding the 1,000 MW of its direct physical connection. The level of these intentional, unscheduled flows are easily verified, since they are reported to SPP by MISO in accordance with the terms of Operational Reliability and Coordination Agreement (“ORCA”) among MISO, SPP, AECI, Louisville Gas and Electric Company; Kentucky Utilities Company; PowerSouth Energy Cooperative; Alabama Power, Georgia Power Company, Gulf Power Company and Mississippi Power Company by and through their agent Southern Company Services, Inc.; and Tennessee Valley Authority (“TVA”), which the Commission has accepted. *Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032 (2013). A graph showing the peak usage by MISO each day for the period December 19, 2013 through January 26, 2014, is attached as Exh. No. 4.

15. Inasmuch as MISO has failed to reserve capacity for these intentional, unscheduled flows, and because no authority exists under the JOA permitting these flows, SPP has invoiced MISO for the unauthorized, unreserved use of the SPP transmission system subject to all applicable SPP tariff charges and penalties. A copy of that invoice is attached as Exh. No. 3. To date, MISO has refused to pay the invoice.

16. This concludes my affidavit.

VERIFICATION

STATE OF ARKANSAS)

COUNTY OF PULASKI)

I, **Carl A. Monroe**, being duly sworn according to law, state under oath that the matters set forth in the foregoing **AFFIDAVIT OF CARL A. MONROE ON BEHALF OF SOUTHWEST POWER POOL, INC.**, are true and correct to the best of my knowledge, information, and belief.

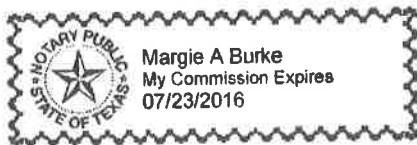


Carl A. Monroe

Subscribed and sworn to before me, a Notary Public, on this 28 day of January, 2014.



Notary Public



My Commission expires: 7-23-16

SEAL

Exhibit No. 1



HELPING OUR MEMBERS WORK TOGETHER
TO KEEP THE LIGHTS ON... TODAY AND IN THE FUTURE

December 9, 2013

Richard Doyling, Chief Operating Officer
Midwest ISO
7020 City Center Drive
Carmel, IN 46032

Dear Richard:

I am writing on behalf of SPP to request the assurances of the Midcontinent Independent System Operator, Inc. ("MISO") that, in view of the Court of Appeals for the District of Columbia Circuit's vacating of the Federal Energy Regulatory Commission's ("FERC") declaratory order regarding MISO's use of the Southwest Power Pool, Inc. ("SPP") transmission system pursuant to section 5.2 of the MISO-SPP Joint Operating Agreement ("JOA"), MISO will refrain from any flows of energy between the MISO Midwest Region and the new MISO South Region (when the Entergy Corporation operating companies join MISO) in excess of MISO's 1000 megawatt contractual tie between the two regions. In a meeting between MISO and SPP staff on December 6, 2013, MISO advised SPP that, notwithstanding the court's decision, MISO intends to exceed 1000 megawatts of flows between the MISO Midwest Region and the MISO South Region. I ask that you reconsider your position and provide the assurances requested in this letter.

For the avoidance of any doubt, please be advised that SPP does not consider the Operations Reliability Coordination Agreement ("ORCA"), to which MISO and SPP are parties, to provide MISO any contractual rights to use SPP's transmission system. This was made clear in sections 1(c) and 5(d) of the ORCA, which expressly provide that the ORCA does not expand MISO's contractual rights under the JOA or otherwise enhance MISO's right to flow energy on the SPP transmission system.

Please further be advised that, unless and until MISO reserves SPP transmission service or we reach a negotiated resolution of our disagreements concerning MISO's use of the SPP transmission system that is approved by the FERC, if MISO's dispatch produces flows between the MISO Midwest Region and the MISO South Region that exceed 1000 megawatts, SPP will consider MISO to have made unauthorized, unreserved use of the SPP transmission system subject to all applicable SPP tariff charges and penalties and subject to all applicable legal remedies.

SPP remains willing to negotiate appropriate arrangements regarding the use of SPP's transmission system, as the FERC has suggested. We are available to continue meeting with MISO to discuss such arrangements at your convenience.

I ask that you provide the requested assurances no later than December 12, 2013.

Sincerely,

A handwritten signature in black ink, appearing to be 'Carl Monroe', written over a horizontal line.

Carl Monroe
Executive Vice President and Chief Operating Officer

Exhibit No. 2



Richard Doying
Midcontinent ISO
P.O. Box 4202
Carmel, Indiana 46082-4202

December 12, 2013

Carl Monroe
Executive Vice President and COO
Southwest Power Pool
201 Worthen Drive,
Little Rock, AR 72223-4936

Dear Carl:

I am responding to your letter of December 9, 2013.

MISO cannot provide the assurance you request to limit MISO's directional market flows under the Joint Operating Agreement to 1,000 MW. It is not clear why you believe the Court of Appeals decision, vacating FERC's 2011 order, leads to this result. The court avoided ruling on the merits of either RTO's substantive position, and vacated the order on procedural grounds only.

As our respective attorneys agreed during last Friday's conference call, the court merely left the parties in their original position with regard to the scope of Section 5.2 capacity sharing under our JOA. A dispute continues to exist regarding this issue and, although vacated if and when the court's opinion takes effect at a future date, FERC initially agreed that MISO's interpretation is correct. Your letter appears to suggest that SPP can impose a contrary interpretation unilaterally before FERC has even had an opportunity to consider the matter. We doubt that FERC would consider that position an appropriate use of the procedures that apply to this situation. If SPP wishes to request that FERC act on the remand once the court order takes effect, you have every right to do, but you have no right to impose your own interpretation – which conflicts with FERC's initial view – unilaterally on MISO and affected customers.

With regard to the Operational Reliability Coordination Agreement (ORCA), your letter selectively omits complementary provisions with regard to each of our rights under the JOA – the ORCA provides that neither MISO nor SPP's rights are expanded *or restricted* by the ORCA, and that the ORCA cannot be used to support an argument regarding our JOA dispute, as you have done in your letter. The operative ORCA language is as follows:

Nothing in this Agreement shall be construed as diminishing or enhancing MISO's or SPP's rights to flow energy on the other's system pursuant to the JOA, or shall be deemed to amend or otherwise modify the JOA. Nothing in this



Agreement shall be deemed a concession or admission by SPP or MISO regarding any issue concerning the JOA. This Agreement shall not be used by MISO or SPP as evidence regarding, or to support or contest the validity of any issue pending in the D.C. Circuit Court of Appeals in Case No. 12-1158, any remand proceeding or other derivative FERC proceeding.

MISO's response last Friday to your demand that MISO limit its market dispatch had nothing to do with the ORCA and is not based on the terms and conditions of the 2013 ORCA, but is based solely on the terms of the JOA, an agreement between the two RTOs dating to 2004.

While MISO is always willing and prepared to meet with SPP to discuss JOA matters, the demand you continue to make for loop flow compensation under the JOA was rejected during our call for several reasons. Our rejection was based on our consumer benefits and equity principles (a copy of the MISO document we discussed on our call is enclosed). The existing JOA congestion management process and the impending market-to-market congestion management process make the type of compensation you seek unnecessary, inefficient and inequitable unless MISO's flows impair SPP's ability to use its transmission system—the very outcome the JOA is designed to avoid. Your ongoing demand for compensation is not tied to economic harm, nor does it square with the previous FERC orders we have cited that explain the many benefits of operating interconnected transmission networks.

Even though both parties acknowledged that we had bargained to impasse, at the conclusion of our call I invited SPP to provide its own version of equity principles to justify a reciprocal compensation system. I am of course discouraged that your letter contained no such principles, but MISO is still prepared to discuss that issue and any others you think would be beneficial to our respective transmission customers and the ultimate retail customers they serve.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Doying", is written over the printed name.

Richard Doying

Enclosure: (1)

Exhibit No. 3



Richard Doying
Midcontinent ISO
P.O. Box 4202
Carmel, Indiana 46082-4202

Re: Bill for Unreserved Use of SPP Transmission System

Dear Richard:

As stated in my December 9, 2013 letter to you, SPP considers MISO, commencing December 19, 2013, to have begun making unauthorized, unreserved use of the SPP transmission system, subject to all applicable SPP Tariff charges and penalties. The use of the SPP transmission system by MISO is not authorized under the MISO-SPP Joint Operating Agreement ("JOA"). To the extent that the FERC previously made any findings to the contrary, those orders have been vacated by the court of appeals. MISO may not place these intentional, unreserved flows on the SPP transmission system based on MISO's unilateral and, in our view, incorrect interpretation of the JOA.

Accordingly, SPP today is billing MISO pursuant to the terms of the SPP Tariff for the unreserved use of the SPP transmission system during the month of December 2013. The bill is based on the MISO reported dispatch flows in each direction between MISO Midwest and MISO South in excess of MISO's 1000 megawatt contractual tie between the two regions, and the FERC-approved non-firm transmission charges and penalties (see SPP Tariff § 14.5) for these flows. A detailed spreadsheet showing the calculation of the charges is included with the bill.

If MISO desires to avoid future penalties under the SPP Tariff, it may request a service agreement for service in accordance with the Tariff under which MISO may make appropriate reservations for the use of the SPP transmission system.

Pursuant to the SPP Tariff, MISO's payment of the bill is due within 15 days.


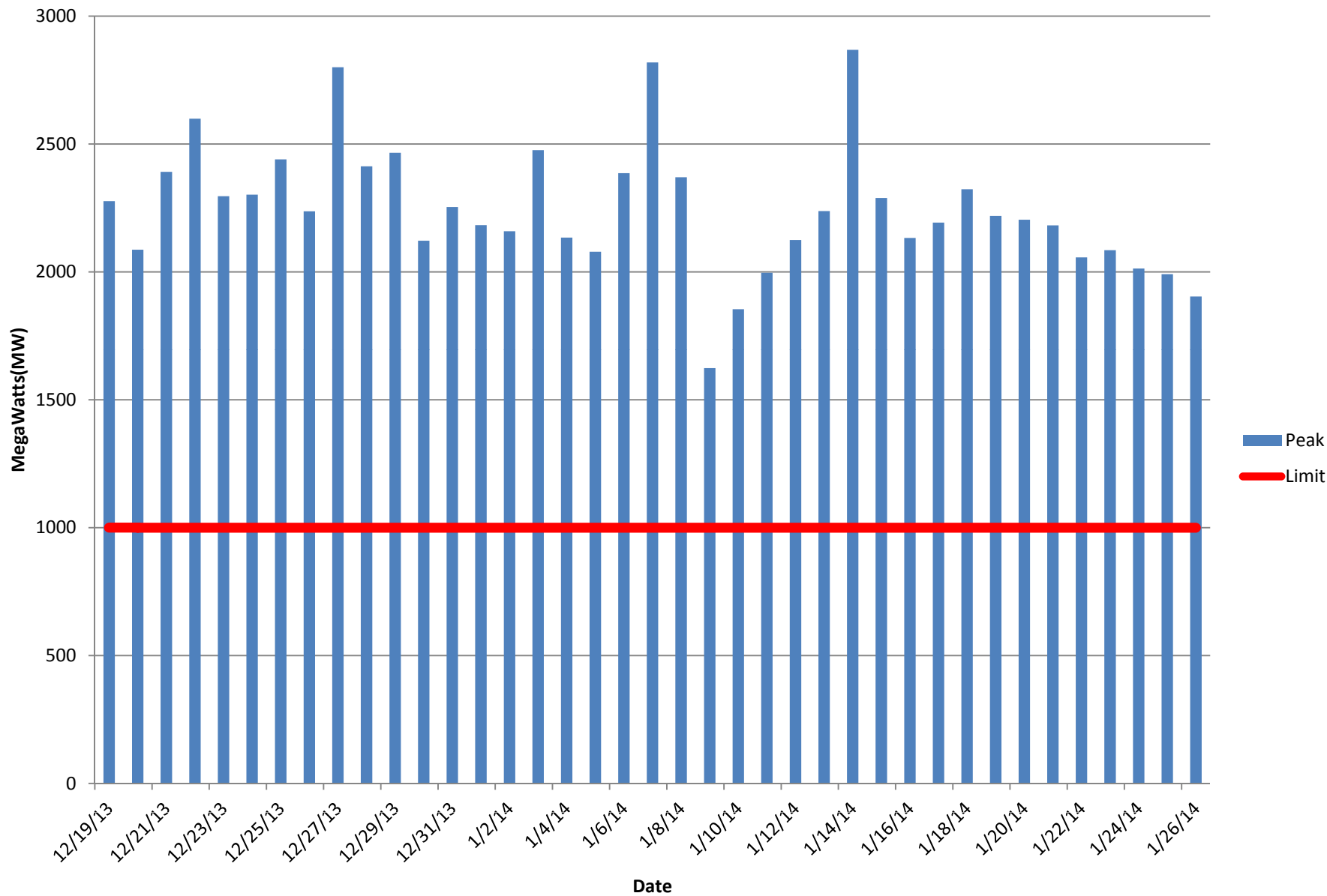
Sincerely,

Carl Monroe

Exhibit No. 4

Daily Peak of Dispatch Flow



Attachment B

SERVICE AGREEMENT FOR NON-FIRM TRANSMISSION SERVICE

- 1.0 This Service Agreement, dated as of _____, is entered into, by and between Southwest Power Pool, Inc. ("Transmission Provider"), and the Midcontinent Independent Transmission System Operator, Inc. ("Transmission Customer").
- 2.0 Service under this Agreement shall be provided by the Transmission Provider on behalf of the Transmission Customer in accordance with this Service Agreement.
- 3.0 The purpose of this Service Agreement is to assess charges for Transmission Customer's use of the Transmission Provider's Transmission System when Transmission Customer places certain flows on the Transmission Provider's Transmission System as a result of Transmission Customer's transfers of real-time energy in each direction between MISO Midwest and MISO South. Such flows shall be subject to the terms and conditions of Part II of the Transmission Provider's Tariff, except as provided herein.
- 4.0 The Transmission Provider, as agent for the Transmission Owners, agrees to provide and the Transmission Customer agrees to take and pay for Non-Firm Point-To-Point Transmission Service in accordance with the provisions of the Tariff and this Service Agreement. Transmission Customer shall secure reservations via Transmission Provider's OASIS sufficient to meet anticipated Assessable Flows. In lieu of scheduling service under the reservations, real-time energy transfers in each direction between MISO Midwest and MISO South will be monitored and calculated, as more fully described below.
- 5.0 For purposes of this Service Agreement, the definitions of the Tariff as well as the following definitions shall apply:
 - A. Assessable Flows. Assessable Flows are defined as Transmission Customer's intentional, hourly unscheduled real-time energy transfers in each direction between MISO Midwest and MISO South (irrespective of the direction of flow) that exceed the Base Transmission Capacity between the MISO Midwest and MISO South regions. Assessable flows shall not include flows that occur with respect to

Transmission Customer's transfers of energy between MISO Midwest and MISO South (irrespective of the direction of flow) when the transfers are less than or equal to the Base Transmission Capacity between the MISO Midwest and MISO South regions.

- B. Base Transmission Capacity. "Base Transmission Capacity" shall be determined by summing Transmission Customer's right to transfer energy pursuant to either (i) Transmission Customer's capacity of a direct physical connection that is in service between MISO Midwest and MISO South; or (ii) a reservation of a specified amount of Point-To-Point Transmission Service on a Transmission Provider's OASIS enabling transfers between MISO Midwest and MISO South.

6.0 Real-time energy transfers shall be determined as follows:

- A. Provision of Dispatch Flow. Transmission Customer will monitor and provide to Transmission Provider the actual MISO Midwest region to and from the MISO South region real-time intra-Balancing Authority Area generation to load (and also taking into account export and import transactions) dispatch flow (the "Dispatch Flow") as calculated below.
- B. Calculation of Dispatch. A dispatch flow calculation will be used to determine the real-time transfers of energy in each direction between MISO Midwest and MISO South. The dispatch flow calculation will be based on the difference between generation and load in each of the MISO Midwest and MISO South regions with an adjustment for interchange transactions with the non-MISO Balancing Authority Areas interconnected to the regions.
- C. Dispatch Flow Assumptions. To account for interchange transactions in the dispatch flow, net schedule interchange with the singularly connected non-MISO Balancing Authority Areas is assumed to source (for export transactions) or sink (for import transactions) in the MISO region to which the non-MISO Balancing Authority Area is singularly connected. To account for interchange transactions with dually connected non-MISO Balancing Authority Areas, the net schedule interchange with an entity will be split between MISO Midwest and

MISO South based on the impedance of the system and the relative distribution of total MISO load or generation. Powerflow modeling will determine the transfer distribution factor impact of a transaction on both MISO regions; source impacts will be determined by the generation and sink impacts determined by the load. Powerflow models will be run at least monthly.

- 7.0 Assessable Flows shall be determined as follows: For each hour, the largest amount of energy transferred in each direction between MISO Midwest and MISO South that exceeds MISO's Base Transmission Capacity as expressed in megawatts, shall constitute the Assessable Flows for the hour in each direction.
- 8.0 The rate for the Non-Firm Point-To-Point Service provided under this Service Agreement shall be the rate set forth in Schedule 8 of the Tariff and all other Tariff specified charges for such Non-Firm Point-To-Point Service. The rate shall be applied to the Assessable Flows in each direction for which Transmission Customer has reserved service in accordance with the Tariff. Assessable Flows in each direction in excess of Transmission Customer's OASIS reservation(s) will be subject to penalties under section 14.5 of the Tariff.
- 9.0 For purposes of the application of Schedule 8, the rate for service in the direction of MISO Midwest to MISO South initially shall be the zonal rate for Zone 10 and the rate for service in the direction of MISO South to MISO Midwest shall be the zonal rate for Zone 6, which are the zones interconnected with MISO Midwest and MISO South with the lowest zonal rates. If the zonal rates change such that the lowest zonal rate is a different zone, the then prevailing lowest zonal rate will apply. Loss calculations shall use Point of Receipt (POR) of Ameren and Point of Delivery (POD) of Entergy for service in the direction of MISO Midwest to MISO South and POR of Entergy and POD of Ameren for service in the direction of MISO South to MISO Midwest.
- 10.0 The Transmission Customer agrees to supply information that Transmission Provider deems reasonably necessary in order for it to provide service under this Service Agreement.

11.0 Any notice or request made to or by either Party regarding this Service Agreement shall be made to the representative of the other Party as indicated below.

Transmission Provider: Southwest Power Pool
Carl A. Monroe
201 Worthen Drive
Little Rock, AR 72223-4936

Transmission Customer: Midcontinent Independent System Operator, Inc.
Richard Doying
720 City Center Drive
Carmel, IN 46032

12.0 The Tariff is incorporated herein and made a part hereof.

IN WITNESS WHEREOF, the Parties have caused this Service Agreement to be executed by their respective authorized officials.

Transmission Provider:

By: _____
Name Title Date

Transmission Customer:

By: _____
Name Title Date

Attachment C

ORIGINAL

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ARKANSAS PUBLIC SERVICE COMMISSION

IN THE MATTER OF A SHOW CAUSE
ORDER DIRECTED TO ENTERGY
ARKANSAS, INC. REGARDING ITS
CONTINUED MEMBERSHIP IN THE
CURRENT ENTERGY SYSTEM AGREEMENT,
OR ANY SUCCESSOR AGREEMENT
THERE TO, AND REGARDING THE FUTURE
OPERATION AND CONTROL OF ITS
TRANSMISSION ASSETS

DOCKET NO. 10-011-U
ORDER NO. 19
VOLUME II

BEFORE:

PAUL SUSKIE, Chairman
COLETTE D. HONORABLE, Commissioner
OLAN W. REEVES, Commissioner

Handwritten initials
ARK. PUBLIC SERV. COMM
SECRETARY OF COMM
2010 SEP 24 P 1:21
FILED

THE ABOVE-STYLED MATTER came on for hearing before
Garold W. Pritsch, Certified Court Reporter, LS
Certificate No. 329, a Notary Public in and for Garland
County, Arkansas, in Hearing Room Number 1 at the
Arkansas Public Service Commission, 1000 Center Street,
Little Rock, Arkansas on September 14th, 2010 commencing
at 9:09 a.m. as follows:

GAROLD W. PRITSCH
BUSHMAN COURT REPORTING
(501) 372-5115

213

1 the Midwest ISO with only about a 215 megawatt contract
2 path, but, again, those contract provisions allow
3 thousands of megawatts to flow north and south between
4 Michigan and the main body of Midwest ISO on a daily
5 basis. It's just a -- Joe can talk about the -- what he
6 sees from an operational perspective, but this is a
7 normal course of business type of operation in both of
8 these instances.

9 And we see in Entergy, Entergy Arkansas or Entergy
10 as a whole, very similar situation. There's currently a
11 thousand MVA path -- contract path between Entergy and
12 the Midwest ISO. We've looked at the contract path
13 sharing that would go on between us and SPP, as well as
14 the flows that can actually physically occur over those,
15 and based on our early modeling, we believe there's well
16 over 4,000 megawatts of flow capability between our
17 system and the Entergy system. We would expect over time
18 for that path to get stronger as transmission
19 construction and transmission planning looked at what
20 needed to be strengthened for those north/south flows.

21 Yes, sir.

22 MR. BITTLE: Ricky Bittle with Arkansas
23 Electric Co-op. Would you explain that? I mean,
24 basically, from a physical standpoint, it appears that
25 you're saying that even though Entergy has got a thousand

1 allows the parties to use it under market flow. We have
2 to go through that discussion to understand whether that
3 is allowed under the contract or not.

4 MR. SCHUG: Okay. Steve, do you want to
5 address that at all?

6 MR. KOZEY: Well, we think we know where
7 the outcome is, but Carl and I don't have to debate.

8 MR. SCHUG: Yeah, we don't have to have
9 that debate here so -- noted.

10 MS. GALLUP: This is Terri Gallup with
11 AEP. Just to add on to that discussion and the next
12 slide where you had the 4,000 megawatts, earlier you said
13 your agreements with SPP says the paths are available for
14 both parties, but if this were used to integrate Arkansas
15 or Entergy Arkansas, wouldn't that be just taken up by
16 their use to try to connect to MISO to get the benefits
17 of the MISO market and SPP members would no longer have
18 that capability?

19 MR. SCHUG: The answer is, yes, that would
20 be used for that flow, just like it is in those two cases
21 we have now, and in the future, there may well be a case
22 that operates the other way, and SPP would be utilizing
23 it, would be utilizing Midwest ISO contract path for the
24 benefit of their membership.

25 Yes, sir.

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E-RSC MEETING

Meeting held at The Sheraton
Hotel, 500 Canal Street, New Orleans,
Louisiana, 70130, commencing at 9:12 a.m.,
on Thursday, the 9th of September, 2010.

1 they choose to look to the midwest ISO.
2 There's about a 1,000-megawatt physical
3 path. There's on the order of
4 4,000 megawatts of capability. The --
5 most of the economics of joining the
6 market is inside that plus or minus
7 4,000 megawatts capability, so we think
8 that it is technically feasible, should
9 they include, it would be a good idea for
10 them.

11 So on to slide 6.

12 Talk a little bit about QFs. I
13 read this slide this morning, doing my
14 homework, and I recognized that there's a
15 lot of words here, but it doesn't say
16 anything. So I'll attempt to embellish a
17 little bit.

18 Inside an organized market, for
19 new qualifying facilities, there's a
20 possibility upon request that a utility
21 gets an exemption from those QF rules
22 because the QF can sell right into the
23 transparent wholesale market. So that's
24 for a going-forward kind of relationship
25 that the QFs upon request essentially

1 of these questions. So we're happy to do
2 that, too.

3 MR. MONROE:

4 President, I'd like to -- this
5 is Carl Monroe -- I'd like to ask: Would
6 it be okay, Clair, if you could clarify
7 where that 4,000 comes from? Because I
8 think that 4,000 -- we can't come up with
9 that value through either using contract
10 path. I know we haven't done the transfer
11 analysis to come up with that.

12 MR. MOELLER:

13 Yeah. It was a transfer
14 analysis; it wasn't a contract path. It
15 was based on the flowgate representations
16 in our pro mod production cost models and
17 what those limits are that I presume we
18 share. I think you guys use that same --

19 MR. MONROE:

20 I'll need a contact, then, from
21 y'all's to discuss that.

22 MR. MOELLER:

23 Yeah. John Longhern would be
24 the guy.

25 MR. MONROE:

1 Okay. Yeah. I think there is
2 a -- there's probably a difference in the
3 way that we interpret the things that are
4 in that joint operating agreement. And
5 part of the issue that we would have is
6 that those -- that portion of the joint
7 operating agreement really deals with new
8 transmission service, how you allocate new
9 transmission service, that those
10 facilities are available, as long as
11 they're available for new transmission
12 service. And we would have to discuss
13 with MISO whether that would be an
14 applicable way of using it when you're
15 integrating a new member, particularly
16 because that -- it does impact a
17 significant amount of our system, and I'm
18 sure AECI would have something to say
19 about the use of their system to do the
20 transfers between the two.

21 And, also, you have to recognize
22 that there are a significant amount of
23 grandfathered transactions that go across
24 that interfa -- just that particular
25 interface in and of itself where the

1 limitation on that transfer may be already
2 taken up by existing transmission service
3 that has to be maintained through the --
4 that transition of integration. So we
5 need to have more discussion around
6 whether, first of all, that joint
7 operating agreement really supports this
8 type of use of the SPP facilities and the
9 AECI facilities and then also, you know,
10 how we would go about representing the
11 existing transmission service that is used
12 over that facility.

13 MR. MOELLER:

14 We don't disagree there's more
15 discussion required there. Our
16 interpretation is premised on -- it's the
17 same words that we used with PJM, and
18 that's how we've used that agreement in
19 other litigation, so...

20 VICE-PRESIDENT FIELD:

21 This is just a comment. On --
22 when you talk about this free wind energy
23 Michigan is going to install, I guess -- I
24 guess the ratepayers don't take advantage
25 of the fact that they are to pay subsidies

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon MISO and each person designated on the official service list compiled by the Secretary in these proceedings.

Dated at Washington, D.C., this 28th day of January, 2014.

/s/ Barry S. Spector

Barry S. Spector

*Counsel for
Southwest Power Pool, Inc.*