

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

Midcontinent Independent)	
System Operator, Inc.)	
)	
<i>Complainant</i>)	
v.)	Docket No. EL14-_____-000
)	
Southwest Power Pool, Inc.)	
)	
<i>Respondent</i>)	

**COMPLAINT AND MOTION TO CONSOLIDATE OF
THE MIDCONTINENT INDEPENDENT
SYSTEM OPERATOR, INC.**

Pursuant to Rules 206 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission” or “FERC”), 18 C.F.R. §§ 385.206 and 385.212 (2013), and Sections 206 and 306 of the Federal Power Act (“FPA”), 16 U.S.C. §§ 824e and 825e, the Midcontinent Independent System Operator, Inc. (“MISO”) hereby brings this Complaint against Southwest Power Pool, Inc. (“SPP”) to the Commission for an order directing SPP to cease issuing invoices to MISO for alleged transmission service, including unreserved use penalties, under the SPP’s Open Access Transmission Tariff (“SPP Tariff” or “Tariff”).¹ SPP is violating its Tariff because there is no basis in the SPP Tariff for assessing such charges against MISO. SPP is violating the MISO-SPP Joint Operating Agreement (“JOA”)² because there is no

¹ Southwest Power Pool Open Access Transmission Tariff, Sixth Rev. Vol. No. 1.

² The formal name of the JOA is the “Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc. and Southwest Power Pool Inc.” The JOA is designated as “Midwest ISO Second Revised Rate Schedule FERC No. 6” and “Southwest Power Pool, Inc. Second Revised Rate Schedule FERC No. 9.” The JOA is the subject of the ongoing dispute in Docket No. EL14-21-000. See Complaint and

basis in the JOA for assessing such charges against MISO. Moreover, imposition of such charges will artificially constrain MISO's energy and operating reserve markets and will adversely affect MISO's market participants, and ultimately, end-use consumers. SPP's unauthorized invoices are thwarting cost-efficient energy market transactions and could have a negative effect on the reliability of the transmission system.³ Accordingly, MISO requests that the Commission find that SPP is in violation of its filed Tariff and the JOA, direct SPP to immediately stop issuing further invoices, and nullify the invoices that SPP has issued to-date.

I. EXECUTIVE SUMMARY

For the last two months, SPP has issued invoices to MISO alleging that MISO owes SPP transmission charges and "unreserved use" penalties for purportedly using transmission service on SPP's system. The invoices amount to charges in excess of \$9 million. These charges originate as a result of SPP's willful misinterpretation of Section 5.2 of the JOA, which provides for sharing of contract path capacity between MISO and SPP.⁴ As explained in more detail in MISO's Answer in Docket No. EL14-21-000, SPP's actions are supported by nothing more than the one-sided interpretation of Section 5.2 of the JOA that is advanced by SPP in its Complaint, coupled with SPP's intentional misreading of the legal effect of the U.S. Court of Appeals for the

Request for Fast Track Processing and Motion to Consolidate, Docket No. EL14-21-000, *et al.* (January 28, 2014) ("Complaint" or "SPP Complaint"). Contemporaneously with this Complaint, MISO is filing a Answer in Docket No. EL14-21-000 that accurately describes the relevant background and implementation of the JOA, as well as the factual underpinnings of the dispute between SPP and MISO. To the extent necessary, MISO incorporates herein by reference its Answer in Docket No. EL14-21-000, including the attachments and exhibits enclosed therewith.

³ MISO is attaching an affidavit by its Executive Vice President of Operations & Corporate Services, Mr. Richard Doying to demonstrate some of these adverse impacts. See Attachment A, Affidavit of Richard Doying on Behalf of the Midcontinent Independent System Operator, Inc. ("Doying Affidavit"). The same copy of the Doying Affidavit is also attached to MISO's Answer in Docket No. EL14-21-000.

⁴ Section 5.2 states 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 Midwest ISO will not be able to deal directly with companies with which it does not physically or contractually interconnect." JOA § 5.2.

D.C. Circuit remand of FERC’s declaratory order interpreting that provision.⁵ By billing MISO for transmission service and by assessing unreserved use penalties, SPP wholly ignores the Commission’s requirements governing the provision of open access transmission service, the role of Regional Transmission Organizations (“RTOs”) in this process and the specific terms of the JOA and its own Tariff. As documented herein, these actions are having an adverse effect on MISO’s energy market operations.

Since December 19, 2013, the date upon which MISO completed the successful integration of ten new transmission-owning companies, six local balancing authorities and 33 new market participants from Mississippi, Louisiana, Arkansas, Texas, and Missouri, including the Entergy Operating Companies,⁶ SPP has maintained that MISO has been using transmission capacity on the SPP system without authorization and without compensating SPP. MISO disputes this assertion, but even if that were true, simply invoicing MISO for such use of the transmission system is not permitted under the Commission’s rules and precedent and the SPP Tariff. SPP’s unlawful invoices and public statements have created artificial market constraints that will significantly increase costs and will result in adverse conditions for MISO’s energy and operating reserve markets and for participants in those markets.

There is no basis for SPP’s invoices. The Commission has held that RTOs do not take transmission service and are not subject to unreserved use penalties. In addition, MISO does not take any recognized transmission service under the SPP Tariff and is neither an “Eligible Customer” nor a “Transmission Customer” as these terms are defined therein. SPP is

⁵ *Midwest Indep. Transmission Sys. Operator, Inc.*, 136 FERC ¶ 61,010 (2011)(“Section 5.2 Order”), *reh’g denied*, 138 FERC ¶ 61,055 (2012)(“Section 5.2 Rehearing Order”), *vacated and remanded*, *Southwest Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013)(“D.C. Circuit Decision”). MISO has addressed fully the import of this decision in its Answer in Docket No. EL14-21-000.

⁶ The Entergy Operating Companies are subsidiaries of the Entergy Corporation and include Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

inappropriately attempting to use its Tariff billing provisions as an apparatus to further its unilateral interpretation of Section 5.2 of the JOA and create the misleading impression that MISO is taking something for which “everyone else” pays.

Although SPP and its allies have sought to frustrate the free RTO choices of MISO’s South Region entities through incessant litigation in multiple forums for over three years, the most concerning recent aspect of this campaign is SPP’s apparent coordinated actions with certain signatories to the Operations Reliability Coordination Agreement (“ORCA”).⁷ Immediately after SPP’s letter to MISO following the D.C. Circuit Decision in early December demanding that MISO limit the flows between the Midwest and South regions of the MISO Balancing Authority Area to 1,000 MWs,⁸ MISO also received nearly identical letters from three other signatories to the ORCA expressing their demand that MISO limit its directional flows under the ORCA to 1,000MW, despite the temporary 2,000 MW cap expressly permitted in the ORCA.⁹ The letters not only demanded the same 1,000 MW limit on directional flows, but based their demand on the same SPP argument that the D.C. Circuit Decision deprived MISO of its rights under Section 5.2 of the JOA, and made the same threat as SPP to invoice MISO for service under their respective tariffs. Further, based upon the letters received and discussions in the ORCA implementation steering committee, these same parties appear to have no intention to

⁷ The Operations Reliability Coordination Agreement was accepted by the Commission as MISO Rate Schedule No. 35. *See, Midcontinent Indep. Sys. Operator, Inc.*, 145 FERC ¶ 61,032 (2013). Signatories to the ORCA, other than MISO, are Associated Electric Cooperative Inc. (“AECI”), Louisville Gas and Electric Company (“LG&E”), Kentucky Utilities Company (“KU”), PowerSouth Energy Cooperative (“PowerSouth”), Alabama Power Company, Georgia Power Company, Gulf Power Company and Mississippi Power Company by and through their agent Southern Company Services, Inc. (collectively, “Southern Companies”), the Southwest Power Pool (“SPP”) and the Tennessee Valley Authority (“TVA”). The parties other than MISO are referred to as the “Joint Parties.”

⁸ *See* Attachment A, Doying Affidavit, Exhibit No. 1.

⁹ *Id.*, Doying Affidavit, Exhibit Nos. 4-6.

develop and implement the ORCA's intra-day and other processes to permit flows in excess of 2,000 MW when there is no congestion on the system.¹⁰

SPP's actions are, therefore, casting a financial cloud over the MISO markets, as well as apparently inducing others to act in concert to frustrate competitive, efficient and reliable market operations. This creates unjust, unreasonable and anti-competitive impacts that have begun affecting MISO's jurisdictional rates, operations and services. Consequently, MISO respectfully requests that the Commission grant this Complaint, find that SPP is violating the JOA and the SPP Tariff in billing MISO for transmission service and penalties, direct SPP to immediately cease issuing such invoices to MISO and void all prior invoices.

II. COMMUNICATIONS

All correspondence and communications in this matter should be addressed to:¹¹

Gregory A. Troxell
Erin M. Murphy
Midcontinent Independent System
Operator, Inc.
P.O. Box 4202
Carmel, IN 46082-4202
Telephone: 317.249.5400
gtroxell@misoenergy.org
emurphy@misoenergy.org

Ilia Levitine
Dennis J. Hough
Duane Morris LLP
505 9th Street, N.W., Suite 1000
Washington, D.C. 20004
Telephone: 202.776.7800
ilevitine@duanemorris.com
djhough@duanemorris.com

III. BACKGROUND

A. Description of MISO

MISO is a 501(c)(4) – social welfare organization and a Commission-approved RTO, headquartered in Carmel, Indiana, that manages a combined footprint of 65,280 miles of transmission with total electric generation capacity throughout its footprint of approximately

¹⁰ *Id.*, Doying Affidavit at ¶ 16.

¹¹ MISO requests waiver of section 385.203(b)(3) of the Commission's regulations to permit the designation of more than two persons upon whom service is to be made in this proceeding. 18 C.F.R. § 385.203(b)(3) (2013).

196,000 MW. MISO's geographic footprint stretches from Manitoba, Canada to the Gulf of Mexico. MISO's transmission system is adjacent to two other RTOs, SPP and PJM Interconnection, L.L.C ("PJM"), and MISO has had long-standing, Commission-approved arrangements in place with each of these neighboring RTOs to address congestion along the common borders.

B. On-Going Dispute Over Section 5.2 of the JOA

In 2010, at the time the Entergy Operating Companies first announced their interest in joining MISO, SPP took the position that the long-standing and largely unchanged JOA governing the seam between the two RTOs would no longer mean what it always had up to that time. That is, section 5.2 of the JOA would no longer permit capacity sharing between the two RTOs if the Entergy Operating Companies became transmission-owning members of MISO.

In order to proactively resolve the divergent interpretations of Section 5.2, in April 2011, MISO filed a petition for declaratory order with the Commission.¹² MISO asked the Commission to remove the uncertainty around the contract path sharing provisions and provide an authoritative interpretation that the JOA provides for the sharing of available contract path capacity, when the entities using that contract path are transmission-owning members of either RTO. SPP opposed this interpretation. The Commission adopted MISO's construction of Section 5.2, and subsequently denied requests for rehearing filed by SPP and certain other parties.¹³ SPP sought judicial review and, on December 3, 2013, the D.C. Circuit Decision vacated the Commission's orders on procedural grounds and remanded the case. The Court declined to adopt either party's interpretation of Section 5.2.

¹² Petition for Declaratory Order And Request For Shortened Notice Period And For Expedited Treatment of the Midwest Independent Transmission System Operator, Inc., Docket No. EL11-34-000 (April 8, 2011).

¹³ See Section 5.2 Order; Section 5.2 Rehearing Order.

C. SPP's Unreserved Use Penalty Invoices

Despite the procedural nature of the Court's decision, on December 9, 2013, SPP sent a letter to MISO demanding that

in view of the Court of Appeals for the District of Columbia Circuit's vacating of the [FERC] declaratory order regarding MISO's use of the [SPP] transmission system pursuant to section 5.2 of the MISO-SPP [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.¹⁴

SPP went on to state that if, in fact, flows did exceed the 1,000 MW contractual tie, SPP "will consider MISO to have made unauthorized, unreserved use of the SPP transmission system subject to all applicable SPP tariff charges and penalties."¹⁵ Additionally, SPP raised the applicability of the ORCA to the dispute, notwithstanding the fact that the ORCA has no bearing on the capacity sharing provisions of the JOA.¹⁶

On December 12, 2013, MISO responded to SPP with a letter that explained MISO's understanding of the procedural nature of the Court's remand, and its effect on the parties.¹⁷ That is, the Court's order merely left the parties in their original position with regard to the scope of Section 5.2 contract path capacity sharing.¹⁸ As a result, MISO explained that it could not provide the assurances that SPP sought to limit MISO's directional flows under the JOA to 1,000 MW. MISO reiterated its invitation to SPP, as part of continued discussions with SPP on loop flow compensation, to set forth its own principles for evaluating a reciprocal compensation system under the JOA. As an attachment to the December 12 Response, MISO included a

¹⁴ See Attachment A, Doying Affidavit, Exhibit No. 1 ("December 9 Letter").

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ See Attachment A, Doying Affidavit, Exhibit No. 2 ("December 12 Response").

¹⁸ *Id.*

description of its three key principles for guiding its views on seams issues: (1) consumer benefits; (2) reliability; and (3) equity. SPP has never put forth its own set of guiding principles.¹⁹

Without responding to MISO's December 12, Response, on January 10, 2014, SPP issued a demand letter with an accompanying bill entitled "Transmission Charges for MISO Usage for December 2013."²⁰ In this correspondence, SPP maintained that it was "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" for amounts in excess of the 1,000 MW contractual tie between the two regions. SPP cited to Section 14.5 of the SPP Tariff for the basis for these charges that total over \$2.4 million. SPP demanded payment within 15 days of the receipt of the Demand Letter.

On January 22, 2014, MISO responded to SPP and stated that it is not a transmission customer under the SPP Tariff and, therefore, is not subject to unreserved use penalties as purported by SPP.²¹ In a separate communication, also dated January 22, 2014, MISO proposed that both SPP and MISO jointly request that FERC issue a declaratory order addressing section 5.2.²² Without providing a substantive response to MISO's invitation to jointly go to FERC to resolve this dispute, on January 28, 2014, SPP initiated a complaint proceeding at FERC in Docket No. EL14-21-000. On January 30, 2014, SPP sent another collection letter demanding payment of the invoice, and threatening to "enforce the applicable remedies" under the SPP

¹⁹ See Attachment A, Doying Affidavit, Exhibit No. 1.

²⁰ See SPP Complaint, Docket No. EL14-21-000, Attachment A, Exhibit No. 3.

²¹ See Attachment A, Doying Affidavit at ¶ 13.

²² *Id.*

Tariff.²³ On February 8, 2014, MISO received another invoice for “transmission charges” during the month of January in the amount of \$6.9 million.²⁴

IV. COMPLAINT

MISO files this Complaint to request that the Commission prohibit SPP from attempting to collect unreserved use penalties from MISO when MISO is not a customer under the SPP Tariff and such flows do not constitute a transmission service under the Tariff. MISO requests that the Commission find that SPP is acting in violation of the JOA which permits the sharing of contract path capacity without compensation under the SPP Tariff. While MISO presented each of the arguments set forth in Sections IV.A and IV.B below as a defense to the SPP Complaint in Docket No. EL14-21-000, the adverse effects of SPP’s invoices on MISO’s market compel MISO to take immediate action through this complaint filing.

A. SPP’s Unreserved Use Invoice Is Contrary to Order No. 890, the SPP Tariff, and the Commission’s Loop Flow Compensation Policy.

Since December 19, 2013 and the integration of the Entergy Operating Companies and the other Transmission Owners in the South into MISO, SPP has attributed charges to MISO for the “Unreserved Use of Transmission” and issued a invoices in the amount of nearly \$9 million to MISO. Mr. Monroe’s letters stated that “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” and subject MISO to unreserved use charges and penalties pursuant to section 14.5 of the SPP Tariff.²⁵

²³ See Attachment B.

²⁴ See Attachment C.

²⁵ See Attachment A, Doying Affidavit, Exhibit No. 2; SPP Complaint, Docket No. EL14-21-000, Attachment A, Exhibit No. 3.

The relevant portion of section 14.5 provides:

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 on month for the amount in excess of such capacity reservation. . . . For the amounts exceeding the non-firm capacity reservation, the *Transmission Customer* must replace losses as required by this Tariff.²⁶

1. SPP’s Transmission Charges and Unreserved Use Penalties Are Barred By Order No. 890.

Order No. 890²⁷ states clearly that RTOs “do not take transmission service” and that unreserved use penalties do *not* apply to RTOs.²⁸ The only operational penalties that apply to RTOs are those involving late system impact and facilities studies.²⁹ SPP’s utter failure to recognize this basic fact is a fatal deficiency that renders null and void its already issued invoices and prevents the adoption of SPP’s transmission service and penalty proposal on a going forward basis under either Section 205 or Section 206 of the FPA.

2. SPP’s Transmission Charges and Unreserved Use Penalties Are Not Permitted Under the SPP Tariff.

The Commission’s policy and the SPP Tariff bar the unreserved use penalties assessed by SPP. The Commission recently voided such penalties in a case that involved two neighboring non-RTO utilities,³⁰ explaining that PacifiCorp could not charge the Los Angeles Department

²⁶ SPP Tariff § 14.5 (emphasis added).

²⁷ See *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g and clarification*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

²⁸ Order No. 890 at P 868.

²⁹ Order No. 890-A at P 484.

³⁰ *Los Angeles Dept. of Water and Power v. PacifiCorp*, 141 FERC ¶ 61,112 (2012) (“LADWP”).

of Water and Power (“LADWP”) unreserved use penalties when operating limits established by the Western Electric Coordinating Council (“WECC”) were in place. In that case, LADWP's change in supply arrangements caused PacifiCorp to incur additional transmission service costs to maintain service to its own customers, but the Commission found that this did not provide a basis for PacifiCorp to charge unreserved use penalties. In particular, the Commission found that “LADWP’s actions did not have the potential to impair reliability or disrupt the allocation of transmission rights, nor did it result in disorderly use of PacifiCorp’s transmission system.”³¹ Similarly, there is no basis for SPP to charge MISO for unreserved use while the JOA is in effect, and for flows that are limited by the CMP to prevent SPP from incurring additional costs.

The Commission’s unreserved use penalty applies when a “transmission customer uses transmission service that it has not reserved and the transmission provider has a Commission-approved unreserved use penalty rate explicitly stated in its OATT.”³² This policy sets forth three distinct criteria necessary for a transmission provider to collect unreserved use penalties: (1) the entity subject to the penalty must be a “transmission customer;” (2) the entity subject to the penalty must “use transmission service that it has not reserved;” and (3) the transmission provider must have “a Commission-approved unreserved use penalty rate explicitly stated in its OATT.” Section 14.5³³ of the SPP Tariff is consistent with the Commission’s unreserved use penalty policy as reflected in the Commission’s *pro forma* OATT, but none of these criteria can be met in the instant case.

³¹ *Id.* at P 41.

³² OATT is an Open Access Transmission Tariff. Order No. 890 at PP 834, 848; *see also*, *Tampa Elec. Co.*, 132 FERC ¶ 61,214 at P 44 (2010); *Big Rivers Elec. Corp.*, 128 FERC ¶ 61,264 at P 10 (2009).

³³ As noted, the transmittal letter accompanying SPP’s undated “Bill for Unreserved Use of SPP Transmission System” cites section 14.5 of the Tariff as the basis for such unreserved use charges.

First, MISO is not a transmission customer of SPP. Section 1.T of the SPP Tariff defines “Transmission Customer” as “[a]ny Eligible Customer (or its Designated Agent) that (i) executes a Service Agreement, or (ii) requests in writing that the Transmission Provider file with the Commission, a proposed unexecuted Service Agreement to receive transmission service under Part II of the Tariff. This term is used in the Part I Common Service Provisions to include customers receiving transmission service under Part II and Part III of this Tariff.”³⁴ The definition is identical to that in the Commission’s *pro forma* OATT and requires a Transmission Customer to be: (1) an Eligible Customer or its Designated Agent; (2) execute a service agreement or request SPP in writing to file a proposed unexecuted service agreement; and (3) receive transmission service under Part II and III of the SPP tariff (*i.e.*, either point-to-point or network service). MISO does not meet any of these requirements. The Service Agreement fails to conform to each of these essential requirements.

MISO is not an “Eligible Customer” or a “Designated Agent” of an Eligible Customer.

The SPP Tariff defines the term “Eligible Customer,” in pertinent part, as follows:

(i) Any electric utility (including the Transmission Owner(s) and any power marketer), Federal power marketing agency, or any person generating electric energy for sale for resale. . . (ii) Any retail customer or eligible person taking unbundled transmission service pursuant to a state requirement that a Transmission Owner offer the transmission service, or pursuant to a voluntary offer of such service by a Transmission Owner, is an eligible Customer under the [SPP Tariff].³⁵

MISO is neither a Federal power marketing agency nor a retail customer. Because MISO does not own or operate any generating facility, it does not generate electric energy and is not a

³⁴ SPP Tariff § 1.T.

³⁵ SPP Tariff § 1.E.

“person generating electric energy for sale for resale.” The only issue, therefore, is whether MISO is an “electric utility.” This term is defined in Section 3(22) of the FPA³⁶ as follows:

(A) The term “electric utility” means a person or Federal or State agency (including an entity described in section 824 (f) of this title) that sells electric energy.

(B) The term “electric utility” includes the Tennessee Valley Authority and each Federal power marketing administration.³⁷

While MISO is a “person,” as this term is defined in the FPA, it does not “sell electric energy.” Rather, MISO is independent of the market participants who do sell electric energy. The MISO Tariff provides that MISO is the “Energy Market Counterparty,” for financial settlements and compliance with the requirements of the Commodities Future Trading Commission, *i.e.*, “the contracting counterparty to Market Participants for all Market Activities contemplated by [the MISO] Tariff, solely in the Transmission Provider's capacity as a principal and not as an agent for any other party.”³⁸ Similarly, MISO is not a “Designated Agent” of any Eligible Customer under the SPP Tariff because it does not perform actions or functions required under the SPP Tariff on behalf of SPP, or any SPP Transmission Owner, Eligible Customer or Transmission Customer.³⁹

Even if MISO were held to be an “Eligible Customer” under the SPP Tariff, it still would not be a “Transmission Customer” because it does not have a service agreement with SPP and it has not requested that SPP file an unexecuted service agreement. Section 15.3 of the SPP Tariff specifically provides that Point-to-Point Transmission Service in the absence of an executed service agreement can commence only “after the date the Transmission Customer provides

³⁶ See *Power & Water Res. Pooling Auth. v. Pac. Gas & Elec. Co.*, 130 FERC ¶ 61,045, P 24 (2010) (“[I]n order to determine whether the Pooling Authority qualifies as an Eligible Customer under PG&E's Wholesale Distribution Tariff, we must examine whether it meets the definition of ‘electric utility’ under FPA section 3(22)(a).”).

³⁷ 16 U.S.C. § 796(22).

³⁸ MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (“MISO Tariff”) § I.E.

³⁹ SPP Tariff § 1.D.

written notification directing the Transmission Provider to file, an unexecuted Point-to-Point Service Agreement containing terms and conditions deemed appropriate by the Transmission provider for such requested Transmission Service.” None of these requirements has been met.

Second, MISO does not use any point-to-point transmission service and, therefore, the penalties prescribed for unreserved use of such service in Section 14.5 of the SPP Tariff do not apply to MISO.⁴⁰ SPP concedes the point in the Complaint when it states that “[w]hen entities in the MISO South region participate in the MISO market, they do so via network transmission service internal to MISO.”⁴¹ Further, section 14.5 of the SPP Tariff authorizes SPP to bill a Transmission Customer for the unreserved use of transmission services “[i]n the event a Transmission Customer *exceeds its non-firm capacity reservation.*”⁴² In addition to not being a Transmission Customer, MISO has no existing reservation on the SPP system and therefore has not exceeded its reservation as required by the SPP Tariff. SPP is attempting to construe the direct tie capability of the interconnection between MISO and SPP as a “transmission reservation” under the SPP Tariff, but there is no basis in the JOA or under the SPP Tariff for equating the tie capacity with a transmission reservation. MISO has not requested or contracted for, and does not receive, any transmission services from SPP at any specified Point of Receipt

⁴⁰ Under the SPP Tariff, the term “Transmission Service” applies only to SPP’s provision of point-to-point transmission service on a firm or non-firm basis. *See* SPP Tariff § I.T. The SPP Tariff also uses the term “Network Integration Transmission Service,” which refers to transmission services provided to network customers pursuant to SPP Tariff’s network service provisions. *See* SPP Tariff § I.N. SPP also provides a variety of Ancillary Services pursuant to the Tariff, including scheduling, system control, and dispatch service; reactive supply and voltage control service; regulation and frequency response service; energy imbalance service; spinning reserve service; supplemental reserve service; and generator imbalance service. MISO does not receive any of these services from SPP, but as proposed, MISO will be charged for all such services under the Service Agreement. *See* SPP Complaint, Docket No. EL14-21-000, Attachment B, Service Agreement § 8.0.

⁴¹ SPP Complaint, Docket No. EL14-21-000 at 19. SPP made similar statements in the DO Proceeding. *See* Section 5.2 Order at P 26 (“According to SPP, when MISO dispatches energy across the MISO transmission system for the use of MISO members, MISO does so using network service transmission capability of the MISO system.”)

or any Point of Delivery. Instead, the JOA governs all aspects of the impacts on each party's system resulting from transmission service each RTO provides to its own customers. Section 5.2 is the mechanism describing how flows will be tolerated, subject to the limits imposed by the CMP, when one of the RTOs dispatches its generation. It does not contain any requirement to reserve service on each other's system or to pay for any such service.

Third, to be able to collect unreserved use penalties, SPP must have a Commission-approved unreserved use penalty rate explicitly stated in its OATT. This requirement stems from Section 205 of the FPA, which states that a transmission provider cannot provide service except pursuant to the rates, terms, and conditions of service on file with the Commission, and that a transmission provider may not change existing rates, terms, and conditions of service without prior notice to the Commission and to the public.⁴³ As explained above, SPP's unreserved use penalty rate applies to "transmission customers" receiving "transmission service," and MISO meets the definition for neither. In addition, the JOA, which is a filed rate schedule of both SPP and MISO, precludes such charges.⁴⁴ Accordingly, no "filed rate" exists to justify SPP's invoices.

3. SPP's Unreserved Use Invoice is Contrary to the Commission's Loop Flow Compensation Policy.

Order No. 1000⁴⁵ reaffirmed the long-standing principle that concerns about flows on a public utility's transmission system that are caused by another public utility are resolved under the Commission's parallel (or loop) flow precedent. This precedent "caution[s] against the hasty submittal of . . . unilateral filings and prefers resolution of parallel path flow issues on a

⁴³ 16 U.S.C. § 824d.

⁴⁴ See Section IV.B, *infra*.

⁴⁵ *Transmission Planning & Cost Allocation by Transmission Owning & Operating Pub. Utils.*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012).

consensual, regional basis.”⁴⁶ As explained in Order No. 1000, the approach originated in *Am. Elec. Power Serv. Corp.*, 49 FERC ¶ 61,377, at 62,381 (1989), *reh’g denied*, 50 FERC ¶ 61,192 (1990), where the Commission held that “inadvertent or unauthorized power flows are an unavoidable consequence of interconnected utility operations.” The Commission particularly emphasized that although “as a matter of physics, power can, and sometimes will, flow over the transmission line of an interconnected, neighboring transmission system, . . . that fact alone has not entitled the interconnected neighboring transmission system to the Commission’s ordering compensation.”⁴⁷ Instead, interconnected utilities are required to “work closely to ensure that the operation of one system does not jeopardize the reliability of a neighboring system, nor diminish the neighbor’s ability to utilize its system in the most economical manner.”⁴⁸

These principles continue to hold true in the age of RTOs.⁴⁹ For the closely interconnected Eastern RTOs, such as MISO, SPP, PJM and now NYISO, the Commission has particularly favored Joint Operating Agreements as a preferred tool of choice to address loop flows and provide compensation where it is due. As MISO has explained in numerous proceedings, the SPP JOA (including its currently pending M2M component, the ICP) is precisely the instrument to address and resolve SPP’s concerns on an efficient and fair basis.

SPP’s unreserved use invoices are profoundly inconsistent with the Commission’s approach towards loop flows. SPP has not made any claims that MISO’s flows “jeopardize the reliability” of the SPP transmission system or “diminish [SPP’s] ability to utilize its system in the most economic manner,” as required by the Commission’s precedent. Indeed, any such

⁴⁶ Order No. 1000, P 506.

⁴⁷ *Am. Elec. Power Serv. Corp.*, 93 FERC ¶ 61,151, at 61,474 (2000).

⁴⁸ *Am. Elec. Power Serv. Corp.*, 49 FERC ¶ 61,377, at 62,381 (1989).

⁴⁹ *See, e.g., N. Ind. Pub. Serv. Co. v. Midwest Indep. Transmission Sys. Operator*, 116 FERC ¶ 61,006 at P 11 (2006)(compensation for loop flows placing burdens on an entity’s system can be ordered if the entity demonstrates that the loop flow jeopardizes the reliability of the entity’s system or diminishes the entity’s ability to utilize its system in the most economical manner).

showing would be well-nigh impossible under the given facts. The NERC Reliability Standards, which are mandatory for both SPP and MISO, protect the reliability of their respective systems and interconnected operations.. Similarly, it can hardly be said that SPP’s ability to utilize its system in the most economic manner is diminished by MISO’s flows. Under the JOA, a party’s flows are uncompensated but the CMP flowgate allocations insure that they do not cause congestion on the other party’s transmission system. The treatment is fully reciprocal and neither party has any advantage over the other. The Commission has found this compensation arrangement just and reasonable.

The SPP invoice applies only to MISO and only to flows associated with dispatching generation within the MISO South footprint. However, it is common knowledge that when generation is committed and dispatched, it will produce flows on adjoining systems. There is no rational basis—and it is entirely discriminatory—to create a rule whereby the generation dispatch of one party to a regional coordination agreement is deemed and invoiced as “unreserved use,” but every other party is deemed legally oblivious to the consequences of its own actions.

SPP has argued that MISO’s use of the term “loop flow” to describe the flows across its system is incorrect, repeatedly asserting that MISO’s flows are not “ordinary” loop flows, but are intentional and unscheduled.⁵⁰ The distinction that SPP is trying to assert is meaningless. MISO’s flows are “intentional” as are all flows in the Eastern Interconnection, and they are not scheduled precisely because they are unscheduled intra-Balancing Authority flows. Because Section 5.2 of the JOA provides MISO with sufficient contract path capacity to carry all of its flows, MISO considers any complaint about such flows on the SPP system to be indistinguishable from other complaints about what SPP calls “ordinary” loop flows.

⁵⁰ See SPP Complaint, Docket No. EL14-21-000 at 25-26.

The CMP flowgate allocations are based on historic flows on each RTO's system prior to the 2004 freeze date -- i.e., on parallel flows, not merely reservations. Prior to labeling MISO's post-December 19, 2013 flows as unauthorized, unreserved, and unscheduled, SPP itself acknowledged that these flows are parallel flows.⁵¹ If congestion develops on an SPP flowgate, MISO will reduce the impact of these flows on the SPP flowgate in accordance with the SPP request under CMP procedures; if no congestion is present, these flows are tolerated in exchange for the benefits of networked interconnection. SPP disagrees, but that is because it seeks to make MISO a transmission customer under the SPP Tariff and to convert MISO's internal Balancing Authority flows into unreserved use of the SPP system.

It is a quibble how the flows are described, and not relevant to this dispute except in this regard: SPP does not allege that it is unable to sell transmission service, or has experienced increased congestion on its system, or suffered any other harm that would justify compensation or penalties under the SPP Tariff, or under the Commission's loop flow precedent. If the Commission determines that some form of compensation is appropriate, then any compensation proposal under the existing JOA that already deals with such flows in great detail should meet, *at a minimum*, the Commission's just and reasonable standard for loop flow compensation between utilities that have no such agreement for dealing with their flows. The invoices sent by SPP fail to meet these criteria.

B. SPP's Unreserved Use Invoice Is Contrary To The JOA.

Section 5.2 of the JOA provides that each party has the right to rely on their combined contract path capacity to satisfy a required transmission path to serve their respective customers.

⁵¹ See, e.g., Request for Rehearing or In the Alternative, Clarification, Docket No. EL11-34-000, at 18, (August 1, 2011) ('To prevent such additional parallel flow impacts, as MISO says is appropriate, the Commission should clarify that, during congestion, MISO must reduce the parallel flows that its market places on the SPP system to Historical Firm Flow as of the Freeze Date.')

SPP disagrees, alleging that this provision only permits transactions between an RTO and a third party system, not transactions internal to one of the RTO parties.

The dispute involves the following sentence in Section 5.2: “If the Parties have contract paths to the same entity, the combined contract path capacity will be made available for use by both Parties.”⁵² MISO believes that this sentence means exactly what it says and applies whenever SPP and MISO “have contract paths to the same entity.” MISO’s view has solid support in the text of the disputed sentence, as well as the remainder of Section 5.2 and the entire agreement.

The critical term is “contract path” and this is where the principal disagreement lies. The JOA does not expressly define the term “contract path”; however, it is used one more time in the same provision and its meaning is further clarified in the following sentence. The second and the third sentences of Section 5.2 state that this provision: (1) “will not create new *contract paths* for either Party that did not previously exist,” and (2) a Party “will not be able to deal directly with companies with which it does not *physically or contractually interconnect*.”⁵³ In its Answer in Docket No. EL14-21-000, MISO has explained in detail that the inseparable link between the second and third sentences implies that “contract path,” as used in Section 5.2, means existing physical *or* contractual interconnections. Both the established canons of contract interpretation and the Commission’s discussion of this term in the context of a similar provision in MISO’s Joint Operating Agreement with PJM support this conclusion. In contrast, SPP’s narrow interpretation of the term as “a designated path over which parties engage in point-to-point transmission service transactions”⁵⁴ is not based on the context, purpose or use of Section 5.2.

⁵² JOA § 5.2.

⁵³ JOA § 5.2 (emphasis added).

⁵⁴ SPP Complaint, Docket NO. EL14-21-000 at 18.

Further, the JOA does not permit the imposition of unreserved use penalties. In fact, MISO and SPP limited their obligations to each other under the JOA in clear language that precludes either of them for unilaterally imposing a charge as proposed by SPP. To that effect, Section 17.1 provides, in relevant part:

This Agreement establishes terms and conditions solely of a contractual relationship, between two independent entities, to facilitate the achievement of the joint objectives described in the Agreement. The contractual relationship established hereunder implies no duties or obligations between the Parties except as specified expressly herein.⁵⁵

The Commission should find that SPP's invoicing of MISO for transmission service and unreserved use penalties pursuant to the SPP Tariff violates the JOA. SPP has not alleged that the flows it is invoicing have exceeded the combined contract path capacity as permitted by Section 5.2 of the JOA, or that SPP has suffered harm from congestion or has been required to redispatch or to curtail firm transactions or has suffered any other harm resulting from the proper application of Section 5.2 contract path sharing. SPP's invoices, therefore, are unlawful, void and of no effect.

C. Adverse Effects of SPP's Actions on MISO's Markets.

SPP's assertions and public pronouncements accusing MISO of illegally using the SPP transmission system casts a financial cloud over the MISO energy market and may inhibit market participants who fear, even remotely, that their transactions could result in assessments, charges and/or penalties for market flows in excess of 1,000 MW.⁵⁶ As Mr. Doying explains, at two stakeholder meetings held after SPP filed its Complaint and unexecuted Service Agreement, some MISO stakeholders asked whether MISO had considered restricting its flows to 1,000MW

⁵⁵ JOA § 17.1. In the interest of economical pleading, MISO incorporates herein its more extensive discussion of the history and meaning of Section 5.2 found in its Answer in Docket No. EL14-21-000, filed February 18, 2014.

⁵⁶ Attachment A, Doying Affidavit at ¶ 15.

as a means of addressing the potential allocation of additional charges and penalties as proposed by SPP.⁵⁷ Others expressed similar concerns, including the allocation method that might be used by MISO if necessary to collect such charges and penalties.⁵⁸

At least as problematic as SPP's public assertions is its apparent coordination with certain ORCA parties that has resulted in halting all progress to implement an intra-day process to permit MISO flows to rise above the temporary 2,000 MW cap on flows under the ORCA.⁵⁹ Coinciding with SPP's December 9, 2013 demand letter, MISO received letters from AEI, TVA and LGE/KU, parties to the ORCA, also demanding that MISO limit its directional flows *under the ORCA* to 1,000 MW rather than the 2,000 MW expressly permitted in the ORCA.⁶⁰ While neither TVA nor LGE/KU can physically prevent flows in excess of 1,000 MW, in the absence of calling a Transmission Loading Relief ("TLR") procedure, they have backed up their position with the same threat to invoice MISO for use of their transmission systems. Given this position, it is clear to MISO that at least TVA and LGE/KU, and possibly AEI,⁶¹ have no intention of complying with the ORCA requirements to develop the intra-day process to permit flows in excess of 2,000 MW even when there is significant unused transfer capability in the system. This belief is supported by the lack of progress in negotiations with the parties to the ORCA.⁶² This simple process should have been in place by the December 19th integration date, but it was not then and is not now. Because the ORCA requires unanimous consent to implement the intra-day process and the other ORCA processes, any one of the Joint Parties can block it.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Doying Affidavit at ¶ 16.

⁶⁰ *Id.*

⁶¹ Unlike the SPP, TVA and LGE/KU letters, AEI's letter cited the Court's decision but conditioned future invoices on the eventual resolution of the dispute by the Commission in SPP's favor.

⁶² *Id.*

The adverse impact of the actions of SPP on competition is clear. Its proposal, to invoice MISO millions of dollars for purported transmission service, will have a chilling effect on the liquidity of cost efficient transactions in MISO's energy and operating reserve markets.⁶³ This activity, in breach of both the JOA and the ORCA, however, also could affect the reliability of the Eastern Interconnection.

Attached to this Complaint is a chart illustrating MISO market flows under the ORCA 2,000 MW Dispatch Flow Limit since the MISO South Region integration on December 19, 2013.⁶⁴ This chart illustrates significant unused transmission capacity that exists in both the North and South direction above the 2,000 MW cap on MISO flows. As Mr. Doying explains, MISO agreed to the 2,000 MW limit, even though it was much lower than the combined contract path shared under the JOA because the limit was transitional, leading to an end state in which flows would only be restricted during periods of congestion.⁶⁵ Further, the intra-day process would permit MISO flows to access the unused transfer capability provided by the capacity shared by MISO and SPP under the JOA.⁶⁶ Under these circumstances, MISO believed these limits were just and reasonable for a temporary period during which surrounding Balancing Authorities and Reliability Coordinators could observe and become familiar with changing flow patterns resulting from the Southern Region integration.⁶⁷

As Mr. Doying notes, except during the extreme weather conditions, the predominant flows since December 19, 2013 have been North to South.⁶⁸ The effect of limiting MISO's internal Balancing Authority flows, as shown on the chart, is to prevent lower cost generation in

⁶³ See Doying Affidavit at ¶ 17.

⁶⁴ See Doying Affidavit, Exhibit No. 7.

⁶⁵ See Doying Affidavit at ¶ 19.

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *Id.*, at ¶ 20.

the Midwest from displacing higher cost generation in the South Region. With the elimination of pancaked rates between the MISO regions, low-cost hydropower from Manitoba and wind resources in the Plains enable Midwest coal plants to displace higher priced generation in MISO South as well as generation in TVA, AECI and LGE that would otherwise compete in MISO South. The MISO Independent Market Monitor report on the Southern Region Integration notes that the ORCA cap, at 2,000MW results in higher than necessary energy prices in that region.⁶⁹ Obviously, if SPP continues to persuade the ORCA Joint Parties to demand a 1,000 MW cap based on SPP's dispute--which the ORCA specifically excludes--and to delay the implementation of the intra-day process, SPP actions, alone and in concert with the ORCA Joint Parties will prevent competitive generation from reaching the MISO South Region.

V. MOTION TO CONSOLIDATE

MISO requests that this Complaint be consolidated with SPP's Complaint in Docket No. EL14-21-000 and SPP's Service Agreement filing in Docket No. ER14-1174-000. All three proceedings arise from the same dispute and should be considered together, within the same timeframe. Consolidating these proceedings will promote efficient use of the resources of the Commission and the parties. Accordingly, this motion is in the public interest and should be granted.

⁶⁹ The report is Exhibit No. 8 to the Doying Affidavit. The report notes that as a result of the ORCA cap, prices in MISO South are \$2 to \$6 MWH higher than the remaining MISO market area

VI. ADDITIONAL INFORMATION REQUIRED BY RULE 206 AND REQUEST FOR WAIVERS

Rule 206 of the Commission's regulations requires a complaint to meet certain informational requirements. MISO addresses those requirements below and requests that the Commission waive any other requirements that may be applicable to this filing.

A. Supporting Documents Included with this Complaint

In accordance with Rule 206(b)(8),⁷⁰ MISO submits the following Attachments in support of the facts set forth in this Complaint:

Attachment A: The Affidavit of Mr. Richard Doying, and exhibits to his affidavit.

Attachment B: SPP Invoice for December 2013

Attachment C: SPP Invoice, February 6, 2014

B. Other Proceedings

In accordance with Rule 206(b)(6),⁷¹ MISO states that the matters raised herein are related to the Commission's final orders in Docket No. EL11-34 remanded to the Commission by the United States Court of Appeals for the D.C. Circuit on December 3, 2013.⁷² The issues raised here are also related to those pending before the Commission in Docket Nos. EL14-21-000 and ER14-1174-000.

C. Attempts to Resolve the Dispute

In accordance with Rule 206(b)(9),⁷³ MISO has attempted, in good faith, to resolve this matter with SPP. As described herein, MISO has held discussions and exchanged correspondence with SPP and it is apparent that SPP believes the Court of Appeals' December 3

⁷⁰ 18 C.F.R. § 385.206(b)(8).

⁷¹ 18 C.F.R. § 385.206(b)(6).

⁷² *Southwest Power Pool, Inc. v. FERC*, 736 F.3d 994 (D.C. Cir. 2013).

⁷³ 18 C.F.R. § 385.206(b)(9).

order allows SPP to assess unauthorized transmission use charges to MISO. MISO has objected to SPP's position, but SPP has not reconsidered. Accordingly, MISO does not believe, based on the attempts to-date to resolve these issues with SPP, that the Commission's alternative dispute procedures would help dispose of this matter.

D. Financial Impact

In accordance with Rule 206(b)(4),⁷⁴ MISO estimates the adverse financial impact of the SPP transmission invoices to be at least \$9 million, which represents the amounts SPP has demanded from MISO to-date, and approximately \$7 million per month thereafter.

E. Service & Form of Notice

MISO is serving a copy of this Complaint on SPP simultaneously with filing at the Commission in accordance with Rule 206(c).⁷⁵ Additionally, MISO has included a Form of Notice suitable for publication in the *Federal Register* as Attachment D.

⁷⁴ 18 C.F.R. § 385.206(b)(4).

⁷⁵ 18 C.F.R. § 385.206(c).

VII. CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, MISO respectfully requests that the Commission grant this Complaint and order SPP to cease invoicing MISO for transmission service and unreserved use penalties under the SPP Tariff and take all other necessary and appropriate steps to require SPP to cease and desist from such actions.

Respectfully submitted,

/s/ Gregory A. Troxell
Gregory A. Troxell
Erin M. Murphy
Midcontinent Independent
System Operator, Inc.
P.O. Box 4202
Carmel, IN 46082-4202
Telephone: (317) 249-5400
Facsimile: (317) 249-5912
gtroxell@misoenergy.org
emurphy@misoenergy.org

Ilia Levitine
Dennis J. Hough
Duane Morris LLP
505 9th St., N.W., Suite 1000
Washington, D.C. 20004-2166
Telephone: (202) 776-7800
Facsimile: (202) 776-7801
ilevitine@duanemorris.com
djhough@duanemorris.com

*Counsel for Midcontinent Independent
System Operator, Inc.*

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