

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

Southern Company Services, Inc.,)	
KCP&L Greater Missouri Operations Company,)	
The Empire District Electric Company, and)	
Associated Electric Cooperative, Inc.,)	
)	
Complainants)	
)	
v.)	Docket No. EL15-_____
)	
Midcontinent Independent System Operator, Inc.)	
)	
Respondent)	
)	

COMPLAINT OF SOUTHERN COMPANY SERVICES, INC., KCP&L GREATER MISSOURI OPERATIONS COMPANY, THE EMPIRE DISTRICT ELECTRIC COMPANY, AND ASSOCIATED ELECTRIC COOPERATIVE, INC.

Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (“Southern Companies”), KCP&L Greater Missouri Operations Company (“KCP&L”), The Empire District Electric Company (“Empire”), and Associated Electric Cooperative, Inc. (“AECI”) (collectively, the “Entergy Export Customers”) bring this action against Midcontinent Independent System Operator, Inc. (“MISO”), as agent and tariff administrator of the MISO Open Access Transmission Tariff (“MISO Tariff”), pursuant to Rule 206¹ of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure for relief under Sections 309² and 205,³ and 206⁴ of the Federal Power Act (“FPA”) in connection with

¹ 18 C.F.R § 385.206.

² 16 U.S.C. § 825h.

³ 16 U.S.C § 824d.

⁴ 16 U.S.C § 824e.

MISO's ongoing violation of its Tariff and Commission orders through the assessment of rates substantially in excess of its filed rate.

I. SUMMARY OF COMPLAINT

MISO's application of a MISO system-wide rate for transmission exports from its new Entergy⁵ footprint ("Entergy Region") is a violation of the MISO Tariff and Commission Orders. Attachment FF-6 of the MISO Tariff⁶ established a "no-cost-sharing" rule governing cost allocation and rate design on the MISO system in connection with Entergy joining MISO. This no-cost-sharing rule acknowledges the historical lack of coordinated planning between the MISO Legacy Region and the Entergy Region, the physical separation of the two regions, and the corresponding absence of any basis to conclude that customers of one region benefit from projects that were planned and constructed solely to benefit customers in the other region. It provides that "any system-wide rate or cost allocation under the provisions of Attachment FF . . . shall be limited to the Planning Area where the project terminates exclusively."⁷ Built by application of the Commission's well-established cost-causation principles to the facts and circumstances surrounding Entergy's entrance into MISO, Attachment FF-6 established and formalized a separation of the Legacy Region from the Entergy Region for purposes of any system-wide rate or cost allocation.

⁵ As used in this Complaint, "Entergy" refers to the Entergy Corp. and its subsidiaries: Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc.

⁶ MISO Tariff, Attachment FF-6, Transmission Expansion Planning and Cost Allocation for Second Planning Area.

⁷ *Id.* at Section IV.A(2)(b).

Attachment FF-6's approval and refinement was accompanied by highly relevant findings of fact and the Commission's interpretive guidance in the Entergy Cost Allocation Orders.⁸ In those orders, the Commission found that "the transmission systems of MISO and Entergy have not been planned . . . such that transmission facilities constructed in one planning area could reasonably be expected to provide benefits to loads in the other."⁹ Distinguishing Entergy's integration into MISO as the "first of its kind," the Commission justified separation of the larger MISO footprint into two separate and distinct regions for cost allocation and rate design purposes: the First Planning Area (also referred to herein as the "Legacy Region") and the Second Planning Area (also referred to herein as the Entergy Region or "MISO South").¹⁰ For each of the two broad Regions, a separate (Region-specific) rate methodology would apply based on whether the export interface (or sink node) was "associated with" the Legacy Region or the Entergy Region. The Commission explained this approach was consistent with the cost causation principle because "no previous MISO entrant presented a similar lack of historical coordination in transmission planning with MISO or otherwise was similarly situated (*e.g.*, scope, geography) to the Entergy Operating Companies."¹¹ Indeed, with the limited exception of certain "Multi-Value Projects" ("MVPs"), Attachment FF-6 does not permit MISO to even

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056 (2012) ("Entergy Cost Allocation Order"), *Order on Reh'g and Compliance*, 141 FERC ¶ 61,128 (2012) ("Second Entergy Cost Allocation Order"), *order on reh'g and compliance*, 144 FERC ¶ 61,020 (2013) ("Third Entergy Cost Allocation Order," these three orders are referred to collectively herein as the "Entergy Cost Allocation Orders").

⁹ Entergy Cost Allocation Order at P 69.

¹⁰ As relevant here, the "First Planning Area" is defined in the MISO Tariff as "[t]he Transmission System of the Transmission Provider Region as it existed immediately before the effective date of the Second Planning Area." See MISO Tariff, 2 Modules, Module A, Common Tariff Provisions, II General Provisions, 1. Definitions, 1.S. Definitions – S. The "Second Planning Area" is defined in the MISO Tariff as "[t]he area of the [MISO region] where Entergy Corporation and its Operating Companies that own and/or operate transmission facilities (*i.e.*, located in Arkansas, Louisiana, Mississippi, or Texas) that are conveyed to the functional control of [MISO] to provide Transmission Service pursuant to Module B of the Tariff. The Second Planning Area shall be formed when the first Entergy Operating Company conveys functional control of its transmission facilities to [MISO]" See MISO Tariff, 2 Modules, Module A, Common Tariff Provisions, II General Provisions, 1. Definitions, 1.F. Definitions – F.

¹¹ Entergy Cost Allocation Order at P 71.

consider benefits in one Planning Area if a project terminates exclusively in the other Planning Area.¹²

Importantly, the Commission also held that the no-cost-sharing rule governs MISO rates outside Attachment FF. In the Second Entergy Cost Allocation Order, the Commission found that the no-cost-sharing rule applied to charges for point-to-point export services, *even if* MISO is not make conforming revisions to the relevant rate schedules.¹³ In other words, under the MISO Tariff as it stands right now, the no-cost-sharing rule applies to *all* MISO transmission rates applicable to export.

Nevertheless, since Entergy's membership in MISO became effective, MISO has failed to abide by the no-cost-sharing rule set forth in the MISO Tariff. Instead, it has implemented billing procedures, invoiced and collected charges from the Entergy Export Customers that violate the no-cost-sharing rule. Indeed, for the Entergy Export Customers' service, MISO has abided by the rule only with respect to its Schedule 26-A (MVP Usage Rate).¹⁴ MISO has violated the requirement of its tariff that it apply the no-cost-sharing rule to all system-wide rates or cost allocations, including the system-wide rates in the other major rate schedules applicable to export service from the Entergy Region – Schedules 7, 8 and 26.¹⁵

As a result on MISO's violation of the MISO Tariff, in December 2013, when Entergy's membership in MISO took effect, the Entergy Export Customers suffered an immediate, massive and unlawful increase in their transmission rates. That increase was (and remains) driven by

¹² See Attachment FF-6 at Sections II.B.1 and II.B.2.

¹³ Second Entergy Cost Allocation Order at P 108.

¹⁴ Though this appears to be the case, as explained below, when pressed for a reason why it is not assessing an MVP usage rate upon the Entergy Export Customers, MISO offers an explanation that does not appear to be based upon tariff requirements. See *infra* at 27 n. 76.

¹⁵ While MISO has failed to abide by the no-cost-sharing rule for Entergy export service for all system-wide rates other than Schedule 26-A, not necessarily limited to Schedules 7, 8, and 26, those schedules drive the majority of the Entergy Export Customers' rate increase.

improper and unauthorized shifting and reallocation of sunk costs and network upgrade costs from the Legacy Region to Entergy Region customers. The shifting and reallocating of Legacy Region costs to Entergy Region customers has never been approved by the Commission.

Only an unnatural reading of the various orders and tariff provisions could lead to the illogical conclusion that the Commission somehow meant to protect only *some* of Entergy's customers from reallocation of Legacy Region transmission costs. The only reading that makes any sense is that the Commission intended to protect *all* of Entergy's transmission customers (not just those delivering to internal loads) from cost shifts and reallocations from the MISO Legacy Region. Beyond the importance of Commission enforcement of the filed rate and its prior orders, this matter is also critically important from an energy policy and competition (markets) standpoint. The Entergy Region has become a toll gate through which Southwestern wind energy necessarily must pass in order to be delivered to major load centers in the Southeast.¹⁶ Reallocation of Legacy Region costs solely to export customers increased that toll in a way that is unjust, unreasonable, unduly discriminatory and preferential.

Additionally, and independently of the above claim, the Entergy Export Customers request that the Commission find, under Section 206,¹⁷ that MISO's ROTR rates as applied to the Entergy Export Customers are unjust, unreasonable, unduly discriminatory, or preferential, and contrary to established cost causation precedent. Specifically, we request that all rate schedules in the MISO Tariff related to export service be modified to the extent necessary to ensure that the no-cost-sharing rule applied to exports from the Entergy Region. MISO has made

¹⁶ So too, MISO is a toll gate through which Southeastern-generated base-load energy must pass to be delivered to the Southwest.

¹⁷ To the extent none of the previously requested forms of relief are available to the Entergy Export Customers, or to the extent that the Entergy Export Customers can be only partially satisfied by the relief request above under Sections 309 and 205, they respectfully request that the Commission treat this as a new complaint under Section 206 of the FPA for MISO's levying of unjust, unreasonable, unduly discriminatory and preferential charges.

no showing and the Commission has made no finding that the Entergy Export Customers derive any benefit from the Legacy Region sunk costs and network upgrades, and yet MISO continues to charge the Entergy Export Customers RTOR charges based on those Legacy Region costs. Because the Commission previously initiated a Section 206 proceeding on its own motion and immediately set the matter for settlement proceedings,¹⁸ the Entergy Export Customers have not yet had an opportunity to present arguments (outside of settlement discussions) in the context of a Section 206 filing regarding MISO's unlawful charges. Section 206, therefore, requires the Commission to set a refund effective date in light of this Complaint, which it should set as of the date of this filing.

II. Impacts of MISO's Unlawful Charges

A. Financial Impact¹⁹

When MISO proposed to establish Attachment FF-6's no-cost-sharing rule in Docket No. ER12-480, it asserted that **no** existing Entergy transmission customer should be subject to a cost allocation or rate design that would, directly or indirectly, subsidize service provided in the Legacy Region of MISO. In MISO's own words, the no-cost-sharing rule was critical to ensure that: “[e]xisting customers in the First Planning Area, and future customers in the Second Planning Area [e.g., the Entergy Export Customers], **will not be adversely affected by the transition. Instead, they will avoid unfair subsidization that could otherwise occur between the Planning Areas if the regional cost allocation rules were not temporarily adjusted.**”²⁰

The Entergy Export Customers were “existing customers” of the Entergy Operating Companies for long-term, firm point-to-point transmission service arrangements prior to Entergy

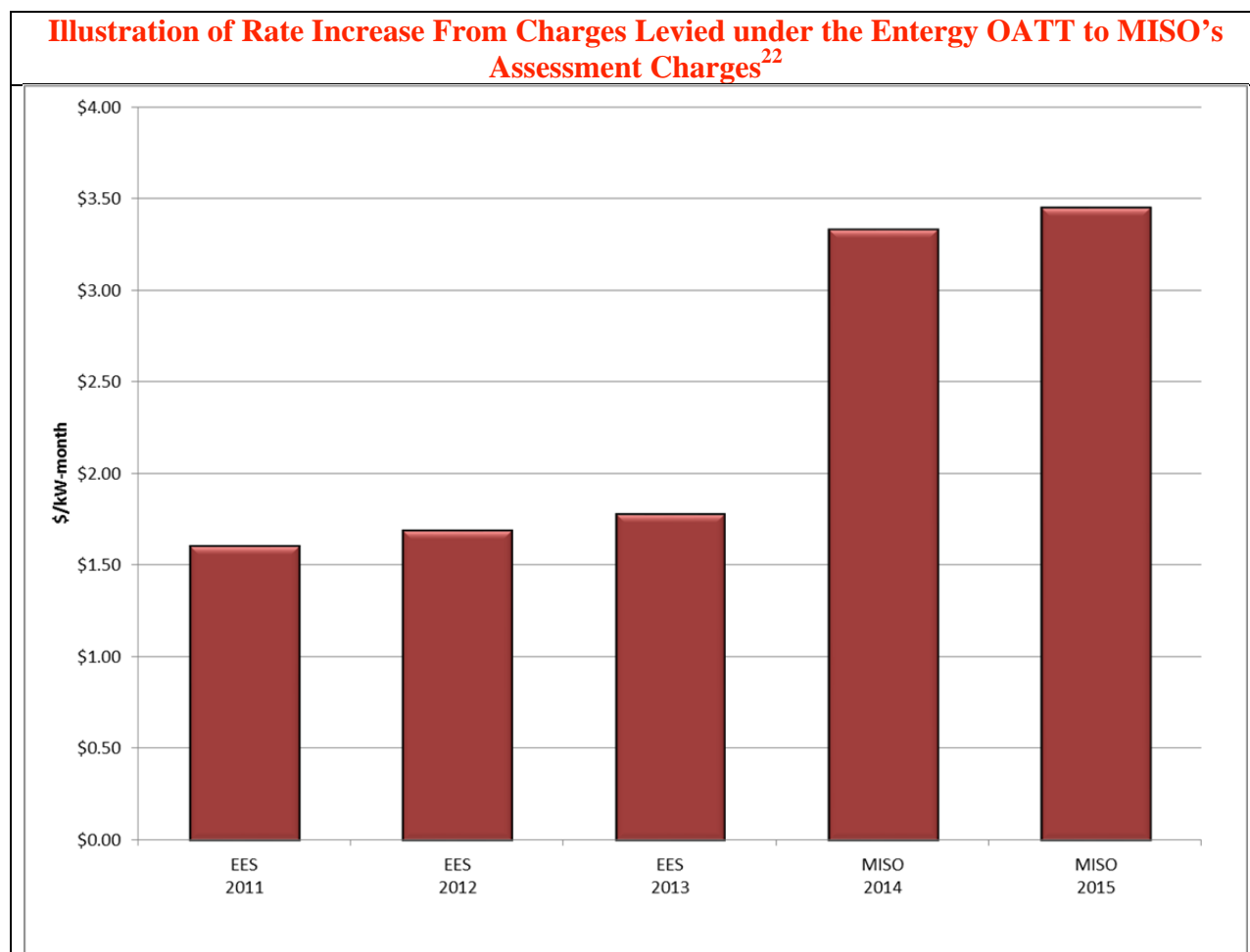
¹⁸ See *ITC Holding Corp.*, 146 FERC ¶ 61,111 at P 77 (2014).

¹⁹ This information is required by 18 C.F.R. § 385.206(b)(4).

²⁰ See November 28, 2011 Filing in Docket No. ER12-480, Transmittal Letter at 9.

joining MISO. Yet we have not been afforded the protections promised by MISO. On the day before Entergy joined MISO, the charges for the long-term, firm point-to-point transmission service under the Entergy Open Access Transmission Tariff (“Entergy OATT”) amounted to: \$1.78/kW-month. On the day after Entergy joined MISO, MISO began levying charges for the very same transmission service over the very same facilities in an amount equal to: \$3.33/kW-month – an increase of 87%.²¹ Today (less than eighteen months later), MISO is levying charges for such service in an amount equal to: \$3.45/kW-month – an increase of 94%. This massive rate increase should never have happened. It was and remains unauthorized.

²¹ These figures solely reflect the rate schedules under the (former) Entergy OATT and the charges MISO is currently assessing based upon reserved capacity. There were other charges for service under the Entergy OATT based upon actual energy (MWh) that are not included in this figure. Likewise, MISO also levies staggering congestion costs (and other volumetric-based charges) on firm point-to-point transmission services under the Entergy Export Customer’s legacy TSAs, most of which, MISO claims, is ineligible for allocation of financial transmission rights on a comparable basis to load-serving entities in (or pseudo-tied into) MISO. The problem with MISO’s financial transmission rights market relative to point-to-point service for remote generation resources wheeling through or out of Entergy is not included in this Complaint. The problem has been brought to MISO’s attention and may be raised in a subsequent complaint or in an amended complaint by one or all of the Entergy Export Customers.



Further information regarding the financial impacts of MISO's unlawful charges as they relate to each of the Entergy Export Customers, respectively, is included in the "Description of Complainants" section of this Complaint.²³

²² The charges included under the Entergy OATT (labeled "EES" in this chart) are for: Schedule 1 (Scheduling, Control and Dispatch), Schedule 2 (Reactive Supply and Voltage Control), Schedule 7 (Firm Point-to-Point Transmission Service), and Schedule 10 (ICT Recovery).

The charges included under the MISO Tariff are for: Schedule 1 (Scheduling, Control and Dispatch), Schedule 2 (Reactive Supply and Voltage Control), Schedule 7 (Firm Point-to-Point Transmission Service), Schedule 26 (Network Upgrade Charge), Schedule 33 (Black Start Service), and Schedule 45 (NERC Cost Recovery). However, the vast majority of these charges arise out of Schedules 7 and 26 alone.

²³ See *infra* at Section III.

B. Practical, Operational and Non-Financial Impact²⁴

As discussed above, not only are the Entergy Export Customers experiencing severe financial effects of the rate increase, but the potential that such inflated rates will continue into the future adversely affects many decisions regarding generation resource and power acquisition. As the Commission is well-aware, utilities across the country are facing a daunting set of existing and potential environmental regulations that seek to reshape supply-side portfolios. As the Commission also is well-aware, a large portion of the nation's best wind energy capacity is located in the Southwest. The Entergy Region (now MISO South) is an intervening transmission system between these southern and western wind resources and Southeastern loads. Indeed, when Entergy joined MISO, it essentially became a continental divide stretching from the nation's northern border to southern border – with MISO as the gatekeeper for the delivery of western wind to Southeastern loads and the delivery of low-cost Southeastern base-load generation to western loads. MISO's ability to saddle customers of the Entergy transmission system with the costs of facilities in the Legacy Region has unduly influenced the economics of any potential acquisition and delivery of (1) clean power produced by these Western wind farms to the load centers in the Southeast and (2) low-cost Southeastern base-load and regulation-capable generation to balancing authority areas in the West. This artificial strain on wholesale resource procurement will continue unless and until it is abated and remediated by the Commission. Further information regarding the practical, operational, and non-financial impact of MISO's unlawful charges as they relate to each of the Entergy Export Customers, respectively, is included in the "Description of Complainants" section of this Complaint.²⁵

²⁴ This information is required by 18 C.F.R. § 385.206(b)(5).

²⁵ See *infra* at Section III.

III. DESCRIPTION OF COMPLAINANTS

A. Southern Companies

Southern Companies are long-term firm point-to-point transmission customers of Entergy with two separate 202 MW (for a total of 404 MW) long-term firm transmission service agreements (“TSAs”). These long-term point-to-point TSAs specify service from Entergy’s interconnections with the Southwest Power Pool (“SPP”), across the Entergy footprint and to the Southern Companies’ system border. The purpose of the transmission arrangement is for delivery service of energy generated by wind farms located in Kansas and Oklahoma (interconnected to the SPP system) that are delivered to the Southern Companies system, using a pseudo-tie arrangement. While the delivered price of energy from the pseudo-tied wind farms was projected to be economic for the life of the purchases (20 years from each wind farm) when Entergy was the transmission provider, base transmission rates over the Entergy system (*excluding* congestion costs) immediately increased by roughly eighty-seven percent (87%) upon the date Entergy’s transition into MISO was permitted to take effect. Between December 2013, when the transition became effective, and April 2015, Southern Companies have paid eight (8) million dollars more than they would have had the prior rates – which were (obviously) based solely on the costs of the Entergy system – remained in effect.

Fairness (and the absence of cost-shifted Legacy Region facilities) in the cost allocation and rate design of export charges under each and every MISO rate schedule is not only important to Southern Companies because of this dramatic cost-shift/overcharge, but also will necessarily affect Southern’s ability to enter into similar agreements in the future. It is well-established that the potential for wind generation is much greater in the Southwest than in the Southeast. While the Southern Companies are committed to providing clean, safe, and reliable energy to their

customers, they remain under great pressure to also assure that electric rates for their customers remain as low as reasonably possible. If the Commission allows MISO to continue to put the costs of the Legacy Region on Southern Companies and other Entergy Region point-to-point transmission customers, the delivered cost of Western wind energy will remain extremely difficult to cost-justify, denying Southern Companies and their customers economic access to important alternative supply-side resources.

Though the Commission has spent great effort under the mandate of Section 217(c) of the FPA to advance policies and practices that will support remote purchase of wind resources by Southern Companies, MISO's practices at issue in this Complaint substantially cut the other way and actually create the opposite incentives. Granting this Complaint, therefore, is not only consistent with Section 217(c), but may be required by it.

B. KCP&L

KCP&L is a transmission, generation, and distribution owning member of SPP serving 318,000 customers in Western Missouri. KCP&L is a subsidiary of Great Plains Energy Incorporated, a multistate electric utility holding company system providing electric service at retail and wholesale. KCP&L has ceded functional control of its transmission facilities to SPP and is also a transmission customer under the SPP Tariff that participates in the markets administered by SPP.

KCP&L and Entergy entered into a twenty-year transmission service agreement in 2009, before Entergy announced it was considering joining MISO, pursuant to which Entergy provides point-to-point transmission service to KCP&L from the Crossroads generating station located in Clarksdale, Mississippi, to KCP&L's load in Missouri (the "Crossroads TSA"). KCP&L utilizes this transmission service to serve its native load customers in Missouri by importing power from

the Crossroads generating facility obtained under a thirty-year power purchase agreement with the City of Clarksdale, Mississippi.

Under the Crossroads TSA, prior to its assignment to MISO, KCP&L paid Entergy approximately \$6 million per year for point-to-point transmission service. Since Entergy's integration into MISO, KCP&L's transmission service charges have nearly doubled.

C. Empire District

Based in Joplin, Missouri, Empire, an investor-owned utility, is a transmission owner member of the SPP providing electric service to approximately 167,000 customers in southwest Missouri, southeast Kansas, northeast Oklahoma, and northwest Arkansas. Empire is a public utility company regulated by the Missouri Public Service Commission, the Kansas Corporation Commission, the Oklahoma Corporation Commission, the Arkansas Public Service Commission, and the FERC.

Empire and Entergy are party to a thirty-year firm point-to-point transmission service agreement. Empire utilizes transmission service on Entergy's transmission system for, among other things, the receipt of power from Empire's ownership and contractual entitlements to the output of the Plum Point generating station. Prior to Entergy joining MISO, service under the transmission service agreement was under the Entergy OATT. Since Entergy joined MISO, Empire's total costs for firm point-to-point transmission service on Entergy's transmission system have nearly doubled.

D. AECI

AECI is a rural electric cooperative that is owned by and provides wholesale power to six regional generation and transmission cooperatives. These regional generation and transmission cooperatives supply wholesale power to 39 distribution cooperatives in Missouri, three

distribution cooperatives in southeast Iowa and nine distribution cooperatives in northeast Oklahoma, serving more than 875,000 customers. AECI has outstanding RUS debt and, therefore, is not a “public utility” as that term is defined in Section 201(e) of the FPA. 16 U.S.C. § 824(e) (2006).

AECI has 200 MW of long-term firm point-to-point service across the Entergy system. Currently, MISO is charging AECI approximately \$8.3 million/year for essentially the same service – a 94% markup over what Entergy charged prior to joining MISO.

The increased transmission charges levied by MISO impede AECI’s ability to use point-to-point transmission service to make bilateral sales of excess generation to the Eastern United States. While that is primarily a commercial activity, the increased RTOR charges have both competitive and operational impacts for AECI. In particular, during periods of low load on the AECI system of 1,100 MW to 1,200 MW, AECI may use point-to-point transmission through the Entergy Region to export power when minimum generation output is expected to exceed the load. AECI’s ability to make these exports during these “minimum generation events” would allow generation resources to continue to run and not have to cycle off and then back on the next day when load increases. This operational flexibility is important considering that AECI’s system includes 600 MW of intermittent wind resources, which will soon increase to 750 MW. However, this flexibility is threatened to the extent that the dramatic increase in transmission costs associated with these exports interferes with AECI’s ability to make export sales.

IV. COMMUNICATIONS

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V. COMPLAINT

A. Attachment FF-6 and the Entergy Cost Allocation Proceeding

Attachment FF-6 of the MISO Tariff established the no-cost-sharing rule for Entergy's transition into MISO. Its requirements are as follows:

- With respect to projects approved **before** Entergy's Transition Period (*i.e.*, before Entergy joined MISO):
 - “**During** the . . . Transition Period, Load and/or Pricing Zones(s) in the Second Planning Area **shall not be allocated any costs** of any MTEP projects . . . that were approved by the Transmission Provider's Board of Directors . . . before the commencement of the Second Planning Area's Transition Period.”²⁶
 - **After** the Transition Period, “Load and/or Pricing Zone(s) in the Second Planning Area **shall not be allocated any costs** associated with BRPs, GIPs, TDSPs, and

²⁶ Attachment FF-6 at Section IV.A.1 (emphasis added).

MEPs that were approved by the Transmission Provider’s Board of Directors . . . before the commencement of the Second Planning Area’s Transition Period.”²⁷

- “The costs of MVPs terminating exclusively in the First Planning Area, planned exclusively for the benefit of the First Planning Area prior to the Second Planning Area’s Transition Period, and approved by the Transmission Provider’s Board of Directors . . . before the Second Planning Area’s Transition Period **shall only be shared across the Planning Areas if the criteria set forth in Section II.B.3 of this Attachment FF-6 are satisfied** If the criteria set forth in Section II.B.3 of this Attachment FF-6 are not satisfied, then the costs of such MVPs **shall only be the responsibility of Load and/or Pricing Zones in the First Planning Area.**”²⁸
- With respect to projects terminating exclusively in the Legacy Region and approved **during** Entergy’s Transition Period (*i.e.*, at least the first five years of Entergy’s membership in MISO):
 - “Projects approved by the Transmission Provider’s Board of Directors . . . **during** the Second Planning Area’s Transition Period that terminate exclusively in one Planning Area shall be allocated only within such Planning Area during the . . . Transition Period For this purpose, **any system-wide rate or cost allocation under the provisions of Attachment FF regarding the particular type of project shall be limited to the Planning Area where the project terminates exclusively.**”²⁹
 - “**After** the Second Planning Area’s Transition Period, Load and/or Pricing Zone(s) in the Second Planning Area **shall not be allocated any costs** of any BRPs, GIPs, TDSPs or MEPs approved by the Transmission provider’s Board of Directors . . . during the Second Planning Area’s Transition Period and terminating exclusively in the First Planning Area.”³⁰
- With respect to MVPs, to the extent “that the Transmission Provider has identified a Combined MVP Portfolio as defined in Section II.B.3 of the Attachment FF-6”³¹:
 - “Load in the Second Planning Area shall be responsible for a share of the costs of MVPs terminating exclusively in the First Planning and approved by the Transmission Provider’s Board of Directors . . . before or during the Second Planning Area’s Transition Period in . . . gradually increasing percentages.”³²

²⁷ *Id.* at Section IV.B.1 (emphasis added).

²⁸ *Id.* at IV.B.3 (emphasis added).

²⁹ *Id.* at Section IV.A.2(b) (emphasis added).

³⁰ *Id.* at Section IV.B.2(a) (emphasis added).

³¹ *Id.* at Section IV.B.5.

³² *Id.*

In other words, (1) with the potential exception of certain MVP projects, **no costs** for projects approved **before** or **during** the five-year transition period (with an in-service date no more than five years after the end of the transition period) would **ever** be allocated across both systems unless such projects actually terminated in both systems;³³ and (2) under certain circumstances, if MISO could make the necessary showing that *both* regions benefitted from a combined MVP portfolio, MVP project costs *could* be allocated between the two systems beginning with the eight-year phase-in following the five year transition period.³⁴ The *only* costs of transmission facilities that may be subject to reallocation after the five-year transition period are MVPs, and those can only be reallocated between the Planning Areas if, after the five year transition period, there is “an MVP portfolio with net benefits to each zone in the combined Planning Areas as calculated pursuant to the equations and qualifying criteria specified in Attachment FF-6.”³⁵ All other costs, be they regionally planned or locally planned, recovered under any “system-wide rate or cost allocation” incurred before or during (and in some cases, after) the transition period would continue to be allocated only within the Planning Area designated by Attachment FF-6 *even after the end of the transition period.*³⁶

³³ Indeed, other than projects terminating in both Planning Areas and certain MVP projects, Attachment FF-6 prevents MISO from even *considering* purported benefits to one Planning Area from a project terminating exclusively in the other Planning Area. See Attachment FF-6 at Sections II.B.1 (“When a BRP planned during the Second Planning Area’s Transition Period will terminate exclusively in one Planning Area, the Transmission Provider’s benefit assessment will consider only the BRP’s benefits in the Planning Area where it terminates.”) and II.B.2. (“When an MEP planned during the Second Planning Area’s Transition Period will terminate exclusively in one Planning Area, the Transmission Provider’s benefit assessment will consider only the MEP’s benefits in the Planning Area where it terminates.”).

³⁴ Attachment FF-6 at Section IV. See also November 28, 2011 Filing in Docket No. ER12-480, Transmittal Letter at 15-17 and Prepared Direct Testimony of Jennifer Curran Filed on Behalf of the Midwest Independent Transmission System Operator, Inc.

³⁵ See November 28, 2011 Filing in Docket No. ER12-480, Transmittal Letter at 15. MISO must make an affirmative showing at the end of the five-year transition period that both regions benefit from the “combined MVP portfolio.” The Entergy Export Customers do not waive their right to challenge all potential application of MVP charges to them, on an as-applied basis, through the Section 206 proceeding or otherwise.

³⁶ See *id.* at 15-16 (“The exclusion of such projects from cost allocation across both Planning Areas is consistent with or similar to MISO’s use of ‘excluded lists’ previously approved by the Commission for other new

In pursuing approval of a no-cost-sharing rule to drive cost allocation and rate design for Entergy's transition, both Entergy and MISO explained and emphasized that transmission facilities in the historical MISO footprint were planned and built to provide services and benefits exclusively in the Legacy Region.³⁷ In contrast, transmission facilities in the Entergy footprint have been planned and built to provide services and benefits exclusively within the Entergy Region. Entergy, MISO, and the MISO transmission owners argued that because the Entergy Region and Legacy Region systems had only been planned and built for the benefit of their respective systems (and customers), historically, no benefits for one system were contemplated from existing facilities of the other system. Therefore, they argued, "it would . . . be unfair to allocate" to one system "a share of the costs of [projects] that were planned only for the needs of" the other system.³⁸ MISO and Entergy argued that this position was consistent with precedent outlining the Commission's cost causation principle.³⁹

They proposed the no-cost-sharing rule to shield Entergy's "customers" (without expressing any intent to exclude some of these "customers," such as the Entergy Export Customers) from being allocated any sunk costs of a separate transmission system that was not planned and constructed to serve or benefit them. As MISO argued, "[e]xisting customers in the First Planning Area, and future customers in the Second Planning Area, **will not be adversely affected by the transition.** Instead, **they will avoid unfair subsidization that could otherwise**

MISO Transmission Owners."); *see also* Entergy Cost Allocation Order at P 15. However, new non-MVP costs for facilities *approved after* the transition period, to the extent MISO makes the necessary showing that the two systems have actually functionally become a single system (from which customers of both systems benefit) after the transition period, could be allocated "system-wide." *See* Attachment FF-6 at Section IV.B.

³⁷ *Id.* at 6-7.

³⁸ *Id.* at 6.

³⁹ *See id.* at 7.

occur between the Planning Areas if the regional cost allocation rules were not temporarily adjusted.”⁴⁰

The Commission found that “the transmission systems of MISO and Entergy **have not been planned . . . such that transmission facilities constructed in one planning area could reasonably be expected to provide benefits to loads in the other.**”⁴¹ Arguments were made in the Entergy Cost Allocation Proceeding⁴² by some interveners from the Legacy Region that MISO should simply “roll-in” the costs of Entergy transmission facilities with those of other MISO transmission owners and for MISO to apply a single MISO-wide rate for point-to-point transmission service (on the theory that the Commission has in the past favored “rolled-in” pricing for integration of member systems into MISO). In response, the Commission rejected the argument’s factual premise and held that no “previous MISO entrant presented a similar lack of historical coordination in transmission planning with MISO or otherwise was similarly situated (*e.g.*, scope, geography) to the Entergy Operating Companies.”⁴³ The Commission explained that it was “not persuaded that Entergy is similarly situated to previous new entrants into MISO, nor that entities in the [Entergy Region] would immediately benefit from multi-value projects [planned for the Legacy Region] upon their integration.”⁴⁴

Generally agreeing with MISO and Entergy, the Commission found, based upon the cost causation principle, that

[T]here is no basis to conclude that the Planning Areas will mutually derive benefits from projects that terminate exclusively in either Planning

⁴⁰ *Id.* at 9.

⁴¹ Entergy Cost Allocation Order at P 69.

⁴² The “Entergy Cost Allocation Proceeding” is ER12-480.

⁴³ Entergy Cost Allocation Order at P 71.

⁴⁴ *Id.* at P 213. It might be noted that the position rejected in the discussion quoted above, is exactly the course MISO has taken and which has forced the Entergy Export Customers to bring this Complaint.

Area, **such that regional cost sharing would allocate costs in a manner that is roughly commensurate with the associated benefits.** As the Seventh Circuit has explained, ‘[a]ll approved rates must reflect to some degree the costs actually caused by the customer who must pay for them.’⁴⁵

As such, the Commission found that it is “reasonable for Filing Parties to propose that [Legacy Region] costs not be allocated to the [Entergy Region] without a demonstration of net benefits.”⁴⁶ With certain discrete and conforming modifications to the proposed tariff language, the Commission accepted the transition paradigm outlined above where, generally, no costs of the Legacy Region (other than facilities terminating in **both** Regions and MVP costs under very specific circumstances) would be allocated to the customers of the Entergy Region and vice versa.

On rehearing, the Commission further reaffirmed the application of the no-cost-sharing rule to rates for point-to-point transmission through or out of the Entergy Region (as distinct from the Legacy Region) when, for example, the Commission first required, then approved, language for Attachment MM to the MISO Tariff that the rate under Schedule 26-A for MVP facilities will be based upon the planning area “associated with” the export interface.⁴⁷ The Commission also required Entergy and MISO to “ensure that the eight-year phase-in period will apply to export and wheel-through transactions by external entities, excluding those that sink in PJM.”⁴⁸

⁴⁵ *Id.* at P 182 (citing *Illinois Commerce Commission*, 576 F.3d 470, 476 (7th Cir. 2009); *K N Energy*, 968 F.2d 1295, 1300 (D.C. Cir. 1992); *Transmission Access Policy Study Group v. FERC*, 225 F.3d 667, 708 (D.C. Cir. 2000); *Pacific Gas & Elec. Co. v. FERC*, 373 F.3d 1315, 1320-1321 (D.C. Cir. 2004); *MISO Transmission Owners v. FERC*, 373 F.3d, 1361 1368 (D.C. Cir. 2004); *Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 4-5 (D.C. Cir. 2002)) (emphasis added).

⁴⁶ *Id.*

⁴⁷ *See, e.g.*, MISO Tariff, Attachment MM at § 4.a.

⁴⁸ Second Entergy Cost Allocation Order at P 100 (citing MVP Order, 133 FERC ¶ 61,221 at P 440); *see also* TPZ Order at P 171 & n. 395 (quoting this passage from the Second Entergy Cost Allocation Order (though incorrectly citing the first Entergy Cost Allocation Order) and noting that the issue of the reallocation of Legacy

The Commission held that the Attachment FF-6 no-cost-sharing rule, as clarified in discussions regarding Attachment MM for Schedule 26A, was also applicable to other cost allocations and system-wide rates, such that conforming revisions to all (otherwise unrevised) system-wide rates in the MISO OATT were unnecessary for the no-cost-sharing rule to apply:

The April 19 Order did not require Filing Parties to revise Tariff provisions regarding the allocation of non-MVP costs in Schedule 26 and Attachment GG. . . . Nonetheless, we note that Attachment FF-6 contains a thorough description of the allocation of non-MVP costs, including provisions to **ensure that the cost of non-MVPs approved before or during the five-year transition period should not be shared between the Planning Areas unless the non-MVP terminates in both Planning Areas.**⁴⁹

Indeed, as articulated by MISO, Attachment FF-6 governs the charges under Schedule 26 and the rate calculations in Attachment GG, “not the other way around.”⁵⁰ Yet MISO persists in allocating Legacy Region Schedule 26 charges on exports from the Entergy Region. So too, Schedule 7 export charges are based upon the “formula included in Attachment O.”⁵¹ The facility costs feeding the formula in Attachment O, in turn, are determined by Attachment FF (as modified by Attachment FF-6).⁵² Accordingly, the “Single System-Wide Rates”⁵³ of Schedule 7

Region costs to Entergy’s export and wheel-through customers is “being addressed currently in the Entergy Cost Allocation Proceeding”).

⁴⁹ Second Entergy Cost Allocation Order at P 108 (emphasis added).

⁵⁰ Docket No. ER12-480-002, Motion for Leave to Answer and Answer of the Midwest Independent System Operator, Inc. at 3, filed June 26, 2012 (emphasis added).

⁵¹ See MISO Tariff Schedule 7 (first paragraph).

⁵² See Attachment FF at Sections II.B.g. (“[T]he costs of projects included in the MTEP, but not eligible for regional cost sharing, shall continue to be eligible for inclusion in the calculation of Transmission Owner revenue requirements under Attachment O of this Tariff.”); II.C.8 (“Moreover, the costs of projects included in the MTEP, but not eligible for regional cost sharing, shall continue to be eligible for inclusion in the calculation of Transmission Owner revenue requirements under Attachment O of this Tariff.”); III.A.2 (“Costs of Baseline Reliability Projects shall be recovered pursuant to Attachment O of this Tariff by the Transmission Owner(s) and/or ITC(s) developing such projects, such that the Transmission Owner(s) and/or ITC(s) developing a Baseline Reliability Project shall be responsible for all of the costs of the portion of the Baseline Reliability Project that is physically located in the Transmission Owner’s and/or ITC’s pricing zone, subject to the requirements of the ISO Agreement.”)

⁵³ MISO Tariff Schedule 7 at (2).

are “system wide rate[s] or cost allocation[s] under the provisions of Attachment FF.”⁵⁴ That section of Schedule 7 was not revised when MISO and Entergy proposed the no-cost-sharing rule to govern all system-wide rates or cost allocations because, as the Commission held, conforming revisions were not necessary for the no-cost-sharing rule to apply.⁵⁵ However, MISO has not abided by this clear directive with respect to *both* Schedule 7 and Schedule 26.

Confirming the applicability of the no-cost-sharing rule to cost allocation/rate design for transmission facilities not planned and justified based upon system-wide benefits and rejecting arguments to the contrary, the Commission found in the TPZ Order that cost allocation and rate design for point-to-point transmission service to an Entergy Region export interface was “being addressed [at that time] in the Entergy Cost Allocation Proceeding.”⁵⁶

Nevertheless, despite the Commission’s directive in the Second Entergy Cost Allocation Order and clarification in the TPZ Order that the issue of reallocation of Legacy Region System Costs to the Entergy Export Customers was subject to Attachment FF-6 and its no-cost-sharing rule, MISO continued to insist to certain Entergy Export Customers that they would be assessed a MISO system-wide rate upon Entergy’s integration. This prompted certain Entergy Export Customers to seek rehearing of the TPZ Order noting that, at least according to MISO, their concerns were not addressed in the Entergy Cost Allocation Proceeding. They alerted the Commission that MISO was still anticipating an increase to their rates under various rate schedules that were proposed to be revised in the TPZ Proceeding (even though neither the application or order purported to address any request to increase rates to Entergy Export

⁵⁴ Attachment FF-6 at Section IV.A.2(b).

⁵⁵ Second Entergy Cost Allocation Order at P 108.

⁵⁶ *ITC Holdings Corp.*, 143 FERC ¶ 61,257 at P 171 (2013) (“TPZ Order”) (referring to the proceeding in Docket No. ER12-480).

Customers based on the reallocation of Legacy Region costs).⁵⁷ In response to those arguments raised on rehearing, the Commission found “that MISO’s proposed RTOR for service over the transmission system in the [Entergy Region] raises issues of material fact that cannot be resolved based on the record before us...” and that “based on the parties’ arguments on rehearing that the proposed RTOR for service over the transmission system in the [Entergy Region] has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful.”⁵⁸ Rehearing of the TPZ Rehearing Order is pending.⁵⁹ Importantly, the Commission did not, on rehearing or elsewhere, revise or otherwise amend its holding in the TPZ Order that the principles that would govern cost allocation and rate design for point-to-point transmission service to Entergy Region export interfaces were addressed in the Entergy Cost Allocation Proceeding.⁶⁰

⁵⁷ See Request for Rehearing of Associated Electric Cooperative, Inc., filed July 22, 2013 in Docket No. ER12-268; see, also, Exhibit A. While it is clear from the Entergy Cost Allocation Orders and the TPZ Order that MISO was prohibited from assessing a system-wide rate for export service from the Entergy Region, due to the fact that Entergy and MISO proposed various elements of the Entergy transition in a number of different dockets and would sometime identify the Entergy Cost Allocation Proceeding as the appropriate forum for addressing this issue and other times identify the “TPZ Proceeding” (ER13-948), the procedural history underlying the TPZ Order is somewhat convoluted. For ease of reference and for the avoidance of confusion, a more detailed procedural history of the filings, arguments, and orders leading to the TPZ Rehearing Order (*ITC Holding Corp.*, 146 FERC ¶ 61,111 at P 75 (2014) (“TPZ Rehearing Order”) is included in Exhibit A to this Complaint.

⁵⁸ TPZ Rehearing Order at P 75.

⁵⁹ See Request for Rehearing of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and The Empire Electric Company of the February 20, 2014 Order under ER12-2681, *et al.*, filed in Docket Nos. ER12-2681-000, *et al.*, March 24, 2014. While the Commission granted partial rehearing of the TPZ Order, it did so without discussion regarding precisely what aspects of the TPZ Order it reversed. KCP&L and Empire requested rehearing of the TPZ Rehearing Order, arguing that because the Commission granted rehearing, the issue of the proposed rate increase under Section 205 remained subject to resolution in those proceedings. The Commission has yet to rule on that rehearing request.

⁶⁰ Neither Entergy nor MISO sought rehearing of the critical finding in the TPZ Order that the Entergy Cost Allocation Proceeding was the venue for addressing RTOR rate issues relative to Entergy’s integration. Any arguments to the contrary by MISO or Entergy at this point would constitute a collateral attack both on the now-final orders in the Entergy Cost Allocation Proceeding, ER12-480, and the TPZ Order. Moreover, while AECI did, in its request for rehearing of the TPZ Order, contend that its concerns were not being fully addressed in the Entergy Cost Allocation Proceeding (because MISO continued to insist that it would be assessing a single system-wide rate for export service even after it was ordered not to) and, as a result, such concerns had no forum for resolution, the Commission, in the TPZ Rehearing Order appears to have rejected this argument by AECI: In short, had the Commission granted AECI’s rehearing request arguing that the TPZ proceeding was the appropriate forum to examine the Entergy Cost Allocation issue, the Commission would not have “institute[d] a section 206 proceeding

Entergy's membership in MISO became effective in December 2013. MISO issued its first invoices to the Entergy Export Customers in early January 2014. Those invoices reflected MISO system-wide rates. The Entergy Export Customers have been paying, and continue to pay, rolled-in system-wide rates since that time. To the knowledge of the Entergy Export Customers, Entergy's export customers are the only "transitioned" Entergy customers that are being forced to pay rates for continued transmission service that include reallocation of costs from the Legacy Region. Stated another way, MISO is imposing a reallocation of Legacy Region costs only on a single category of former Entergy transmission customers – those that export power rather than sink it within MISO.

B. MISO's Violation of its Filed Rate

MISO has been in violation of its Tariff and Commission orders since the effective date of Entergy's membership in MISO, when MISO began charging the Entergy Export Customers rolled-in system-wide rates based upon the costs of *both* the Entergy and Legacy Regions.⁶¹ It is doing this notwithstanding its no-cost-sharing rule proposal, and the Commission's determination, that in order to facilitate Entergy's transition into MISO and to protect customers from bearing the costs of facilities from which they have not been shown to benefit, Entergy's transmission customers would pay a rate *exclusively* based upon the costs of the Entergy system for at least the first five years of Entergy's membership in MISO without *any* reallocation of

on its own motion," *see* TPZ Rehearing Order at P 77, nor would it have set a refund effective date (required for investigations under Section 206 of the FPA into existing rates that may be unjust, unreasonable, unduly discriminatory or preferential). Instead, because those proceedings were based upon Section 205 filings, had the Commission accepted AECI's rehearing argument, it would neither have need to institute a Section 206 proceeding on its own motion, nor have need to set a refund effective date (under Section 205 of the FPA, proposed tariff revisions initiated by the selling utility are subject to refunds from the effective date of the proposed rate change with no fifteen-month limitations). This factual background is explained in further detail in Exhibit A.

⁶¹ With one possible exception for the allocation of MVP costs. *See infra* at n. 76.

sunk costs⁶² between the Entergy Region customers and the Legacy Region customers (even after the five year transition period). Such requirement is memorialized in MISO's Attachment FF-6.⁶³ MISO's assessment and collection of charges in excess of the filed rate violate FPA Section 205. The Entergy Export Customers, therefore, bring this Complaint under FPA Section 309⁶⁴ requesting that the Commission issue an order requiring MISO to comply with the terms of its filed rate and the Commission's orders and issue refunds for all amounts in excess of such rate since the date that MISO began levying its unlawful charges.

MISO and Entergy proposed "a transition period during which **costs will not be shared between the two Planning Areas so that no entity must bear the costs of a transmission facility from which it has not been shown to benefit, consistent with cost causation principles.**"⁶⁵ This is incorporated into Attachment FF-6.⁶⁶ In the compliance filings regarding that proposal, MISO and Entergy were pressed on what this means for the Entergy Export Customers: whether they would be charged a system-wide rate or an Entergy-only rate. After resolving that export customers are, indeed, transmission customers of the system from which they export (just like all other point-to-point transmission customers) MISO and Entergy were required to change Attachment MM to make clear that the allocation of MVPs would follow the principles of Attachment FF-6.⁶⁷ Indeed, Attachment MM (and Schedule 26-A) is subject to Attachment FF-6 and its no-cost-sharing rule. The resulting MISO Tariff language that is

⁶² Except for MVP costs if certain showings are made.

⁶³ *See supra* Section V.A.

⁶⁴ *See infra* Section V.D.i.

⁶⁵ Entergy Cost Allocation Order at P 76.

⁶⁶ *See* Attachment FF-6 at Section IV; *see also supra* at Section V.

⁶⁷ *See* Second Entergy Cost Allocation Order at P 101; *and* Midwest Independent Transmission System Operator, Inc. and MISO Transmission Owners' Compliance Filing for Transition and Integration of Entergy Corporation and its Operating Companies, Transmittal Letter at 8 and Attachment MM at Section 4(a), filed December 17, 2012 in Docket No. ER12-480-003; *see also* Motion for Leave to Answer and Answer of the Midwest Independent System Operator, Inc. at 3, filed June 26, 2012 in Docket No. ER12-480-002.

currently on file for Attachment MM clearly articulates that the Entergy Export Customers should only be allocated MVP costs for the Entergy system and are *not* allocated MVP costs for MVPs in the Legacy Region system.⁶⁸

Protestors requested that the Commission require MISO to make similar conforming tariff changes to the other rate schedules governed by Attachment FF-6, noting that

simply reading the tariff without the benefit the April 19 Order **might lead one to conclude erroneously that the no-cost-sharing rule of Attachment FF-6 does not equally apply to Schedule 26 charges**. Thus, even though the April 19 Order and Attachment FF-6 make all non-MVP costs subject to the no-cost-sharing rule—and **no clarification of Schedule 26 or Attachment GG ought to be necessary**—the May 21 compliance filing creates an ambiguity within the MISO Tariff concerning this fundamental point, which warrants some clarifying tariff language.⁶⁹

In response to these arguments, MISO assured the Protestors (and the Commission and other parties) that

those changes are unnecessary because . . . **Attachment FF-6 clearly sets forth a no-cost-sharing rule** for such non-MVPs associated with the Entergy transition period, and ‘Attachment FF-6 . . . takes precedence over Attachment FF.’ As recognized by AECC, in matters relating to the Entergy transition, **Attachment FF-6 governs the charges under Schedule 26 and the rate calculations in Attachment GG, ‘not the other way around.’**⁷⁰

The Commission took MISO at its word and did not require any ministerial changes to existing MISO Tariff provisions with unrevised “system-wide rate” formulae noting “that Attachment FF-6 contains a thorough description of the allocation of non-MVP costs, including provisions to ensure that **the cost of non-MVPs approved before or during the five-year transition period should not be shared between the Planning Areas** unless the non-MVP terminates in both

⁶⁸ See Attachment MM at Section 4(a).

⁶⁹ See Protest of Arkansas Electric Cooperative Corporation, filed June 11, 2012 in Docket No. ER12-480-002 at 2-3.

⁷⁰ Motion for Leave to Answer and Answer of the Midwest Independent System Operator, Inc. at 3, filed June 26, 2012 in Docket No. ER12-480-002 (emphasis added).

Planning Areas.”⁷¹ In other words, because any pre-existing MISO Tariff “system-wide rate” formula, as modified by Attachment FF-6, was capable of separate application for customers of either the Legacy Region or the Entergy Region, respectively, it was not necessary for MISO to make conforming or ministerial changes to existing rate schedules or attachments in order for the no-cost-sharing rule to apply.⁷²

Despite the Commission’s assurance, MISO has erred in the application of its tariff **in the exact way the Protestors predicted it would**. Specifically, while MISO appears to be abiding by the no-cost-sharing rule for *MVPs* that terminate exclusively in the Legacy region,⁷³ it has not done so for non-MVP and local facility costs recovered through, *inter alia*, Schedules 7, 8 and 26. This has rendered the bizarre result in MISO’s billings to the Entergy Export Customers where (a) cost allocation of MVPs (by definition, projects with the broadest regional benefits justification and cost allocation) are restricted to the Region in which such facilities are located (to-date, **all** MVPs are in the Legacy Region and, appropriately, Entergy Export Customers are not being charged amounts based upon MVP costs) while (b) the costs of Legacy Region non-MVPs (by definition, more local in character and, accordingly, providing far fewer “regional” benefits than MVPs) are being allocated “system-wide.”

Therefore, the imposition of such costs upon the Entergy Export Customers is a clear and direct violation of MISO’s filed rate, in violation of Section 205 of the FPA. The Entergy Export Customers respectfully request refunds for all amounts paid above the lawful rate (*i.e.*, all costs

⁷¹ Second Entergy Cost Allocation Order at P 108 (emphasis added).

⁷² See also *supra* Section V.A.

⁷³ While the Entergy Export Customers are not being allocated the costs of Legacy MVPs, in accordance with Attachment FF-6 and Attachment MM, during discussion with MISO, the reason given by MISO for such calculation was *not* that Attachment FF-6 and Attachment MM required such, but rather a different reason having to do with their scheduling arrangements and ability to participate in the markets (which appear unrelated the rates MISO actually has on file).

of Legacy non-MVP facilities and other “MISO system-wide” costs subject to Attachment FF-6 for which MISO has imposed non-Entergy-only charges to the Entergy Export Customers) from the date that MISO first began assessing such charges upon the Entergy Export Customers. As articulated below,⁷⁴ the appropriate remedy for Section 205 violations of the filed rate is a full refund, with interest, of all overcharges collected in violation of the MISO Tariff.⁷⁵

C. Cost Causation

i. The Application of Cost Causation Principles to Entergy’s Admission into MISO has Already been Resolved

Since the effective date of Entergy’s membership in MISO, MISO has, in invoices to the Entergy Export Customers, simply rolled-in the cost of the Entergy Region transmission zones into the Legacy Region rate design for point-to-point export service. This clearly does not reflect separation between the Legacy Region and the Entergy Region, as required by Attachment FF-6 and the Commission’s orders (discussed above). Because these underlying charges involve costs for facilities that have not been (and will not be) planned and built for the combined Entergy Region and Legacy Region systems (many were, in fact, built and operating even when Entergy was known as Gulf States Utilities), the proposed approach to applying a single set of RTOR rates under MISO’s array of rate schedules creates a shifting and reallocation of sunk costs that serves no useful purpose other than to increase rates for Entergy Region export customers. This

⁷⁴ See *infra* at Section VI.D. “Scope of Refunds and Refund Effective Date.”

⁷⁵ KCP&L and Empire filed a request for rehearing of the TPZ Rehearing Order, which remains pending as of the filing of this Complaint, arguing that the Commission should find that MISO’s proposal to increase the Entergy Export Customers’ rates through the reallocation of Legacy Region system costs – if proposed by MISO at all – was in its Section 205 filing in ER13-948, *et al.* and, accordingly, this issue remains subject to resolution in those proceedings under Section 205. See Request for Rehearing of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and The Empire Electric Company of the February 20, 2014 Order under ER12-2681, *et al.*, filed in Docket Nos. ER12-2681-000, *et al.*, March 24, 2014. To the extent the Commission grants that rehearing request or finds that MISO never actually proposed the instant rate increase through a Section 205 filing, the Entergy Export Customers respectfully request that this Complaint be lodged in the Section 205 proceeding established by the order granting such rehearing request or making such finding.

not only violates the filed rate (as explained above), but also is anticompetitive (by driving up the costs for Entergy’s utility neighbors thereby reducing costs for Entergy and the other MISO transmission owners) and wholly inconsistent with settled cost causation principles articulated by the Commission in its Entergy Cost Allocation Orders.⁷⁶ MISO should not be permitted to re-litigate the merits of this issue in the TPZ Proceeding,⁷⁷ the Commission’s Section 206 investigation proceeding,⁷⁸ or any of the associated proceedings. Even if MISO is permitted to relitigate this issue, the Commission should remain consistent with its cost causation holdings in the Entergy Cost Allocation Orders and require MISO to apply the no-cost-sharing rule to *all* of Entergy’s point-to-point transmission customers.

ii. MISO’s Allocation of Legacy Region Costs to Entergy’s Transmission Customers Violates the Cost Causation Principles

To the extent that the Commission finds that the cost allocation issue was not resolved for all system-wide rates, including charges under Schedule 7, by proper application of Attachment

⁷⁶ See generally, Entergy Cost Allocation Order at P 75 (“It is undisputed that there has been no coordinated planning between two [sic] Planning Areas. Filing Parties have shown that there are significant differences between the Planning Areas that demonstrate that the use of a transition period is just and reasonable, and no further showing is necessary.”); and at P 77 (“Filing Parties propose a transition period during which **costs will not be shared between the two Planning Areas** so that **no entity** must bear the costs of a transmission facility from which it has not been shown to benefit, **consistent with cost causation principles**. . . . Therefore, we find that rather than endangering the integrity of the RTO, as suggested by Midwest Transmission Customers, the proposed transition period will strengthen MISO by facilitating the integration of new entrants.” (emphasis added)); and at P 182 (“Before the transition period, projects in the First Planning Area were not planned for the Second Planning Area, and as a result, it is reasonable for Filing Parties to propose that those costs not be allocated to the Second Planning Area without a demonstration of net benefits. Until MISO applies its existing transmission planning process to the Second Planning Area, so that both Planning Areas use common processes and criteria, **there is no basis to conclude that the Planning Areas will mutually derive benefits from projects that terminate exclusively in either Planning Area, such that regional cost sharing would allocate costs in a manner that is roughly commensurate with the associated benefits**. As the Seventh Circuit has explained, “[a]ll approved rates must reflect to some degree the costs actually caused by the customer who must pay for them. Not surprisingly, we evaluate compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.” (emphasis added, citations omitted)).

⁷⁷ Docket No. ER13-948.

⁷⁸ Docket No. EL14-19.

FF-6, the Commission should find⁷⁹ that a MISO system-wide rate for export service from the Entergy Region is unjust, unreasonable, unduly discriminatory and preferential. The Commission should also set a refund effective date as of the date of this Complaint pursuant to Section 206.⁸⁰ Importantly, while the Entergy Export Customers have shown that the applicability and application of the cost causation principle was already established for purposes of Entergy's admission into MISO,⁸¹ the Entergy Export Customers provide this additional precedent to the extent the Commission provides MISO an additional opportunity to justify imposing a system-wide rate upon the Entergy Export Customers (but no other Entergy Region transmission customers). If the Commission agrees with the arguments in Section V.C.i, *supra*, it need not reexamine *de novo* what the cost causation principle requires with respect to the reallocation of Legacy Region costs to Entergy Region transmission customers. Nevertheless, assuming, *arguendo*, that the Commission disagrees with the Entergy Export Customers and finds that the question of what the cost causation principle requires with respect to Entergy's MISO membership has not been resolved, it should nonetheless reject MISO's attempt to

⁷⁹ To the extent the Commission grants the pending rehearing requests in ER13-948, *et al.* (*i.e.*, finds that the proposed rate increase remains subject to resolution under Section 205 in those proceedings) or finds that MISO never actually proposed this rate increase under Section 205, the Commission should make this finding under Section 205. To the extent that MISO system-wide rates for the Entergy Export Customers' transmission service from the Entergy Region have been accepted under Section 205 through final Commission orders, the Commission should make this finding under Section 206.

⁸⁰ Because the Commission, in EL14-19, *et al.*, established a Section 206 investigation upon "its own motion" without clarification regarding what aspects of the RTOR may be unjust and unreasonable, the Entergy Export Customers have not had occasion, prior to the instant Complaint, to assert their arguments that MISO's rate for export service from the Entergy Region is unlawful under Section 206 (though they have asserted similar arguments under Section 205 in comments, protests, and rehearing requests in the "ITC Transaction Proceeding" (ER12-2681 – *see* Exhibit A for a summary of the ITC Transaction Proceeding) and the TPZ Proceeding). As such, because these arguments are presented in the context of a Section 206 proceeding for the first time in the instant Complaint, Section 206 requires the Commission to set a new refund effective date.

⁸¹ Any attempt by MISO, Entergy, and/or the MISO Transmission Owners is potentially a collateral attack on the Entergy Cost Allocation Orders. In any event, if MISO wished to deviate from this portion of its filed rate, it should have explicitly proposed to do so in a Section 205 filing, which it has never done.

reallocate Legacy Region costs to the Entergy Export Customers pursuant to its authority under Section 206.

The Commission's precedent and policy disfavors reallocation of sunk costs, even by regional transmission organizations. For example, in *PJM Interconnection, LLC*,⁸² the Commission rejected an argument that certain facilities should be "rolled into" a postage stamp rate in replacement of a license plate rate, which is akin to what MISO and Entergy propose here in converting an Entergy system license plate rate with a MISO-wide postage stamp rate: "Although ... the grid today is operated on an integrated basis, this fact alone does not support a reallocation of sunk transmission costs within PJM."⁸³ The Commission there found that replacing a license plate rate with a postage stamp, system-wide rate would not be just and reasonable because it would not "reflect the prior investment decisions of the individual transmission owners and the fact that these facilities were built principally to support load within the individual transmission owners zones" and because rolling costs into higher billing determinate license plate rates would cause "large cost shifts that are not clearly associated with the actual use of these facilities."⁸⁴ The Commission concluded that "it is therefore consistent with principles of cost causation to continue to allocate the costs of these facilities to the customers for whom they were constructed."⁸⁵

MISO is not immune from this principle because it is an RTO. When a zonal rate design is appropriate, as it is here for point-to-point service in the different Planning Areas under MISO's OATT, "the Commission expressly recognized that zonal rate design may be

⁸² 119 FERC ¶ 61,063 (2007).

⁸³ *Id.* at P 3.

⁸⁴ *Id.*

⁸⁵ *Id.* at P 42.

appropriate for an RTO to reflect the geographical makeup of the RTO or the transmission cost differences in various subregions of an RTO.”⁸⁶ Applying the cost causation principle to the facts of the case before it, the Commission in *PJM Interconnection*, found that a cost shift that increased rates by more than seventy percent was not just and reasonable: “we find that costs shifts of this magnitude ... support our rejection of a move away from license plate rates for PJM’s existing transmission facilities.”⁸⁷

That the separation between the Legacy Region and the Entergy Region is not only rooted in a long-history of having completely separated planning and objectives, but also that the two areas are not even directly interconnected,⁸⁸ further supports a finding that separate license plate rates should be applied for the two MISO regions. In *AEP II*,⁸⁹ the Commission recognized that mere coordination of generation dispatch across an RTO footprint does not justify forcing a single system-wide rate for transmission service because “constraints may prevent some customers from using certain parts of the transmission system.”⁹⁰ This is exactly the case for the Entergy Region as distinguished from the Legacy Region. Even assuming that MISO truly had a system-wide generation dispatch that included both the Legacy Region and the Entergy Region (which it currently does not, due to internal constraints, hurdle rates, unresolved seams problems, etc.), that fact alone would have no bearing on whether point-to-point transmission customers exporting power from the Energy Region benefit from the transmission facilities built for the Legacy Region. In such a situation, “reallocating the cost of existing facilities would neither

⁸⁶ *Id.* at P 57.

⁸⁷ *Id.* at P 59.

⁸⁸ Currently, MISO does not control any transmission facilities directly interconnecting the Entergy and Legacy Regions. It is only able to move power between the two Regions through a 1,000 MW contract path across the AECI transmission system.

⁸⁹ 122 FERC ¶ 61,083, *order on rehearing*, 125 FERC ¶ 61,341 (2006).

⁹⁰ *Id.* at P 87.

provide economic efficiencies nor promote the goal of increasing necessary transmission investment.”⁹¹ Rather, the “continued collection of through and out rates is antithetical to the efficient dispatch of the system because they raise barriers to regional scheduling.”⁹² “In Opinion No. 494, the Commission found that the costs of existing facilities, which were not built under a regional planning process, should not be charged to supposed customers of utilities who played no role in the planning process, especially when the alleged use cannot be specifically proven.”⁹³

The policy against reallocation of sunk costs was also reflected and reaffirmed in Order No. 890, when FERC required transmission providers to develop regional cost allocation policies for new facilities, and to implement a policy for credits for network customers for new facilities, but not to require a reallocation of the costs of existing facilities.⁹⁴ Similarly, in *MISO*,⁹⁵ the Commission notes the Organization of MISO States principle that “the parties that cause and benefit from the upgrade should pay for the upgrade.”⁹⁶ In *MISO*,⁹⁷ with respect to reliability upgrades, the Commission approved MISO’s proposed “method for regional cost sharing for future projects [that] leaves previously planned projects untouched by the proposed cost sharing” because such distinction “simply recognizes the existing state of the system along with those projects which were already planned.”⁹⁸

⁹¹ *Id.* at P 97.

⁹² *Id.* at P 111.

⁹³ *Id.* at P 131.

⁹⁴ Order No. 890 at P 758.

⁹⁵ 117 FERC ¶ 61,241 (2006).

⁹⁶ *Id.* at P 15; *see also MISO*, 108 FERC ¶ 61,027 at P 38, *reh’g*, 109 FERC ¶ 61,085 (2004).

⁹⁷ 114 FERC ¶ 61,106, *order on reh’g*, 117 FERC ¶ 61,241 (2006).

⁹⁸ *Id.* at P 109.

Neither Entergy nor MISO has made any attempt to address, much less cost-justify, imposing a reallocation of Legacy Region costs on Entergy Export Customers. To the extent MISO seeks indulgence of presumptions of benefits solely by virtue of Entergy’s membership in MISO, such arguments would be unavailing and contrary to recent judicial rulings, such as *Illinois Commerce Commission v. FERC*.⁹⁹ In that case, as the Commission is aware, the Court rejected the notion that regional transmission operators or the Commission could presume “benefits” from such vague concepts as “reduced congestion, reduced outages, reduced operating reserve requirements, and reduced losses” incidental to membership in an RTO.¹⁰⁰ The court rejected assertions of vague and incidental benefits such as this to justify spreading the costs of remote facilities to customers who are incidental beneficiaries as compared to the primary entities who benefit from such facilities – in that case, the allocating of costs of transmission facilities located in New Jersey, designed and planned to resolve reliability and other issues in the eastern part of PJM to utilities in the western portion of PJM; in this case, the allocating of costs for Legacy Region transmission upgrades, designed and planned to exclusively benefit the Legacy MISO system, to point-to-point customers of the Entergy system.¹⁰¹ In fact, MISO’s

⁹⁹ 756 F.3d 556 (7th Cir. 2014).

¹⁰⁰ *Id.* at 559.

¹⁰¹ *Id.* at 561-62 (“The Commission assumes—it does not demonstrate—that the benefits of the eastern 500-kV lines are proportionate to the total electric-power output of each utility, no matter how remote the utility is from the eastern projects that the utility is to be made to contribute to the costs of. **It is a method guaranteed to overcharge the western utilities, as they will benefit much less than the eastern utilities from eastern projects that are designed to improve the electricity supply in the east . . .**” (emphasis added)). So too, benefits to certain utilities in the Entergy Region do not necessarily flow to the Entergy Export Customers, who generally only take transmission service in the Entergy Region to facilitate the delivery from generation resources from which they have already contractually secured long-term rights. Access to other markets and generators is immaterial to these needs. *See id.* at 562 (“[T]here is no indication of how the benefits of the increased efficiency are likely to be distributed across PJM’s region. **Some of the savings that the report attributes to the new projects**, such as greater generation capacity, **appear to be irrelevant to utilities in the western subregion** such as Commonwealth Edison, because those utilities don’t need additional generation capacity; the need is in the east.”(emphasis added)).

attempt to do precisely what the court rejected in the context of PJM is even more egregious than what PJM had attempted.

Unlike the PJM transmission system, the Entergy Region transmission system (as already discussed) is physically and operationally isolated from the Legacy Region transmission system and in order to move power between the two, MISO must procure transmission services and, even if transmission *is* available from third parties, trades from the Entergy Region to the Legacy Region are subject to “hurdle rates” and other measures that (directly or indirectly) form a physical and economic border crossing station that prevents any such use from occurring. To say that point-to-point customers of the Entergy Region derive a “system-wide” benefit just because Entergy has affiliated with MISO is wholly unjustifiable.¹⁰² In fact, other than projects terminating in both Planning Areas and certain MVP projects, Attachment FF-6 prevents MISO from even *considering* purported benefits to one Planning Area from a project terminating exclusively in the other Planning Area.¹⁰³ Allocation of costs without any showing (or even consideration) of associated benefits would run directly contrary to all current Commission precedent regarding the cost causation principle.

¹⁰² *Id.* at 564 (“By now it should be apparent that the basic fallacy of the Commission’s analysis is to assume that the 500-kV lines that have been or will be built in PJM’s eastern region are basically for the benefit of the entire regional grid. **Not true**; their purpose is to address specific reliability violations in the eastern part of PJM. No electric-power company would spend billions of dollars just to improve reliability in the absence of reliability violations that required fixing. There are bound to be benefits to the entire grid and therefore to the utilities connected to it, **but they are incidental**, just as repairing a major pothole in a city would incidentally benefit traffic in the city’s suburbs, because some suburbanites commute to the city. So they should pay a share of the cost of repair, but a share proportionate to their use of the street with the pothole rather than proportionate to their population. **The incidental-benefits tail mustn’t be allowed to wag the primary-benefits dog.**” (emphasis added)).

¹⁰³ *See* Attachment FF-6 at Sections II.B.1 (“When a BRP planned during the Second Planning Area’s Transition Period will terminate exclusively in one Planning Area, the Transmission Provider’s benefit assessment will consider **only** the BRP’s benefits in the Planning Area where it terminates.”) and II.B.2. (“When an MEP planned during the Second Planning Area’s Transition Period will terminate exclusively in one Planning Area, the Transmission Provider’s benefit assessment will consider **only** the MEP’s benefits in the Planning Area where it terminates.”) (emphasis added).

Moreover, MISO has conceded this point for all transmission customers of the Entergy Region *other than* the Entergy Export customers. Through various tariff revisions, MISO has allocated, or committed to allocate, only the costs of the Entergy Region to point-to-point and network transmission customers who sink in the Entergy Region.¹⁰⁴ However, MISO proposes to share and reallocate the entire costs of both the Legacy Region and the Entergy Region to Entergy's point-to-point export customers. While they may argue that the Entergy Export customers benefit from the ability to "redirect" their transmission service into the Legacy Region system (subject, of course, to availability, the hurdle rate, and other physical and economic limitations) and to "access" the Legacy Region delivery zones, such ability is equally applicable to all Entergy transmission customers, not simply those who export out of Entergy. Indeed, under the Tariff, transmission customers who sink in the Entergy Region are not charged a system-wide rate for transmission service *even if their transmission service sources from the Legacy Region*. In addition, to the extent MISO attempts to argue that point-to-point export customers from the Entergy Region are not similarly situated to point-to-point customers sinking in the Entergy Region, the Entergy Export Customers note that (1) any distinction is immaterial for purposes of the instant Complaint (a point-to-point customer whose sink is the Entergy/Southern border benefits no more from the Legacy Region facilities than a point-to-point customer whose sink is five miles west of the border, though MISO is charging the former a system-wide rate and would charge the latter an Entergy Region-only rate) and (2) MISO and the MISO Transmission Owners argue the very opposite (that internal and external point-to-point customers **are** similarly situated) with respect to export customers who sink in PJM: "[C]onstruing the Anti-Pancaking Orders as precluding assessment of MVP charges to PJM

¹⁰⁴ See generally Docket No. ER12-480 (Entergy Cost Allocation Proceeding).

would render **the bizarre result** that **customers within MISO** will be assessed an additional charge for MVPs whereas **similarly situated customers exporting from MISO to PJM** would not.”¹⁰⁵ An even more bizarre result would be assessing a MISO system-wide charge for point-to-point customers sinking at Entergy Region external interface nodes while assessing an Entergy Region-only charge to point-to-point customers sinking at Entergy Region internal nodes though both sets of customers’ access to and benefits from the Legacy Region are *identical*. Such a disparity between customers who are, for the instant purposes, similarly situated has not and cannot be justified. If the Commission’s authority to reject a rate that is unduly discriminatory or preferential applies to *any* situation, it must certainly apply to this.

D. Scope of Refunds and Refund Effective Date

i. Full Refunds for Charges in Excess of the Filed Rate

The Entergy Export Customers bring this Complaint in the first instance under Section 205 and 309 and request refunds for all amounts that have been charged (and are charged in the future) by MISO in excess of its filed rate (*i.e.*, any and all charges based upon the cost of the Legacy Region system). Such action under Section 205 (via 309, “which vests the Commission with the power to ‘perform any and all such acts . . . as it may find necessary or appropriate to carry out the provisions of [the FPA]”¹⁰⁶) is wholly within the Commission’s authority and aligns with the “Commission’s general policy of granting full refunds.”¹⁰⁷ Indeed, this outcome not only “furthers the purposes underlying the filed rate doctrine”¹⁰⁸ but also prevents the detestable

¹⁰⁵ See Comments of the Midcontinent Independent System Operator, Inc. and the MISO Transmission Owners at 24, filed April 22, 2015 in Docket No. ER10-1791 (emphasis added).

¹⁰⁶ *Towns of Concord, Norwood, and Wellesley, Mass. v. FERC*, 955 F.2d 67, 73 (D.C. Cir. 1992) (citing 16 U.S.C. § 825h; *Niagara Mohawk Power Corp. v. FPC*, 379 F.2d 153, 158 & n. 18 (D.C. Cir 1967)).

¹⁰⁷ *Towns of Concord, Norwood, and Wellesley, Mass.*, 955 F.2d at 76 (citing *Illinois Power Co.*, 52 FERC ¶ 61,162 at 61,625 (1991)).

¹⁰⁸ *Id.* at 75.

situation that “would allow companies to flout [the Commission’s] regulations, and overcharge consumers with impunity.”¹⁰⁹ If this was not the case, “[p]arties aggrieved by the illegal rate would have no FERC remedy, and the filed rate doctrine would preclude a direct action against the offending seller. That result does not comport with the underlying theory or the regulatory structure established by the FPA.”¹¹⁰

Such result would also align with the Commission’s long-standing policy “to establish the earliest refund effective date allowed in **order to give maximum protection to customers.** [97 FERC ¶ 61,275] at 62,198. ‘This interpretation is consistent with FERC’s ‘primary purposes’ in ‘protecting consumers.’”¹¹¹ As the court has made clear, the Commission

has remedial authority to require that entities violating the Federal Power Act pay restitution for profits **gained as a result of a statutory . . . violation** [*i.e.*, violation of § 205 of the Federal Power Act]. *Consol. Edison*, 347 F.3d at 967; *Towns of Concord, Norwood & Wellesley v. FERC*, 955 F.2d 67 (D.C.Cir.1992), *S. Cal. Edison Co. v. FERC*, 805 F.2d 1068, 1071-72 (D.C.Cir.1986). This authority derives from § 309 of the Federal Power Act Unlike refund proceedings commenced under § 206, **no time limits apply to remedial actions filed pursuant to § 309.**¹¹²

The Entergy Export Customers understand that the Commission has purported to set the certain rate schedules in, *inter alia*, the EL14-19 for hearing pursuant to Section 206 with a refund effective date that is later than the date of the initial imposition of such charges. To the

¹⁰⁹ *California, ex rel. Lockyer v. FERC*, 383 F.3d 1006, 1015 (9th Cir. 2004).

¹¹⁰ *Id.* at 1016.

¹¹¹ *Pub. Util. Commission of the State of Calif. v. FERC*, 462 F.3d 1027, 1046 (9th Cir. 2006) (*quoting Lockyer*, 383 F.3d at 1017) (emphasis added); *see also Consol. Edison Co. of New York, Inc. v. FERC*, 247 F.3d 964, 972. (“While the Commission has discretion to determine the remedy for tariff violations-which may include refunds, *see* 16 U.S.C. § 825h; *Towns of Concord*, 955 F.2d at 73-**it has a “general policy of granting full refunds” for overcharges**, *id.* at 76.”(emphasis added)).

¹¹² *Pub. Util. Commission of the State of Calif. v. FERC*, 462 F.3d 1027, 1048; *see also id.* (“FERC’s claim that it is precluded from ordering pre-Refund Period relief under § 206 may be quickly dispatched. The relief sought by the California Parties in this part of the proceeding is based on § 309, not § 206. Although the § 206 proceedings seeking refunds because of unjust and unreasonable rates are limited to the Refund Period, **§ 309 proceedings based on tariff violations are not. FERC’s apparent conclusion that the time limits applicable to § 206 proceedings also apply to § 309 proceeding is incorrect as a matter of law.**” (emphasis added)).

extent that the issue of the appropriate rate for transmission customers of the Entergy System (and that they shall not bear the costs of the Legacy Region system) has already been resolved in Attachment FF-6 and the Entergy Cost Allocation Proceeding, any imposition of charges for the Entergy Export Customers' transmission service based upon the costs of facilities in the Legacy Region is a violation of the filed rate and, therefore, a violation of Section 205, not Section 206. Therefore, all unlawful charges received by MISO under those rates are subject to *full* refund (not limited to the refund period set in the TPZ Rehearing Order).¹¹³

ii. Refund Effective Date

The Entergy Export Customers also respectfully request, in addition to, and independently of the relief requested above under Section 309, that the Commission consider this a new Section 206 complaint encompassing the arguments advanced herein and set a new refund effective date as of the date of the filing, as required by Section 206. Because the Commission, in the TPZ Rehearing Order established a Section 206 investigation upon "its own motion" without clarification regarding what aspects of the RTOR may be unjust and unreasonable, the Entergy Export Customers have not had occasion, prior to the instant Complaint, to assert their arguments that MISO's rate for export service from the Entergy Region is unlawful under Section 206 (though they have asserted similar arguments under Section 205 in their comments, protests, and rehearing requests in the TPZ Proceeding). As such, because these arguments are presented in the context of a Section 206 proceeding **for the first time** in the instant Complaint, Section 206 requires the Commission to set a new refund effective date.¹¹⁴

¹¹³ To the extent the Commission grants KCP&L's and Empire's pending rehearing request of the TPZ Rehearing Order or finds that MISO never actually proposed the instant rate increase through a Section 205 filing, the Commission should order full refunds of all charges in excess of the lawful rate ultimately set by the Commission pursuant to Section 205. *See supra* at n. 75.

¹¹⁴ *See, e.g., ENE v. Bangor Hydro-Electric Co.*, Order Denying Rehearing, 151 FERC ¶ 61,125 (2015) (outlining and following Commission precedent regarding new complaints brought under Section 206 and finding

VI. REQUEST FOR RELIEF

The Entergy Export Customers hereby request that the Commission:

- (i) Under the authority granted to it pursuant to Sections 205 and 309 of the FPA, order MISO to refund all amounts paid in excess of its filed, Commission-accepted rate, with interest, and to refrain from overcharging the Entergy Export Customers prospectively;
- (ii) *To the extent that MISO's charges to the Entergy Export Customers, which include the reallocation of Legacy Region costs, are permitted by MISO's filed (and Commission-accepted) Tariff,* institute a new investigation into the legality of such rate increases pursuant to the Commission's authority under Section 206 of the FPA and set a new refund effective date as of the date of this Complaint.

VII. OTHER PROCEEDINGS¹¹⁵

As explained above, the issues raised in this Complaint may overlap with pending proceedings on rehearing in Docket No. ER13-948, *et al.* In the TPZ Rehearing Order, the Commission set for hearing "MISO's proposed RTOR for service over the transmission system in the MISO South region."¹¹⁶ As explained in the complaint,¹¹⁷ KCP&L and Empire filed a rehearing request of that order, arguing that the proposed rate increase: (1) was proposed in that proceeding under Section 205;¹¹⁸ (2) is unjust, unreasonable, unduly discriminatory and

that the preexistence of similar Section 206 proceedings does not override Section 206's plain language requiring the Commission to set a new refund effective date with new refund periods when new arguments are advanced).

¹¹⁵ This information is required by 18 C.F.R. § 385.206(b)(6).

¹¹⁶ TPZ Rehearing Order at P 75.

¹¹⁷ *See supra* at n. 75 and n. 113.

¹¹⁸ While the instant Complaint argues that the cost allocation issue was always housed in the Entergy Cost Allocation Proceeding, as explained in Exhibit A attached hereto, the procedural history can be somewhat

preferential and (3) remained subject to the Commission’s review pursuant to Section 205 *and not* Section 206. The Entergy Export Customers believe that the matter that MISO is forcing them to reargue in those proceedings were already resolved in the Entergy Cost Allocation Proceedings (ER12-480). Nevertheless, to the extent the Commission sets this Complaint for hearing, the Entergy Export Customers respectfully request that such hearing be consolidated with the hearing procedures instituted in Docket Nos. ER13-948, EL14-19, *et al.*.

VIII. ALTERNATIVE DISPUTE RESOLUTION/NEGOTIATION AMONG THE PARTIES¹¹⁹

The Entergy Export Customers have pressed this issue in the settlement discussions and in pleadings before the Commission in Docket No. EL14-19 (and its associated proceedings). To-date, these efforts have proven fruitless and the Entergy Export Customers believe that the parties have reached and remain at an impasse.¹²⁰ Therefore, the Entergy Export Customers believe that further alternative dispute resolution and negotiations between the parties will not lead to a final resolution of these issues.

confusing. Indeed, though MISO and Entergy generally maintained that the Entergy Cost Allocation Proceeding was the appropriate venue to address the instant concerns, they did not *always* do so. *See, e.g., Midcontinent Independent System Operator, Inc.*, Order Accepting Tariff Revisions, 145 FERC ¶ 61,244 (2013) at P 23 & n. 45 (“Entergy Services and MISO argue that the protests of the RTOR in this proceeding constitute a collateral attack on the [TPZ Order] Citing various pleadings filed in the Entergy-ITC Rates [ER13-948, ER12-2681, and ER13-782, consolidated] and Entergy-ITC Merger Proceedings, **Entergy Services and MISO assert that it was clear from the substance of the filing in Docket No. ER13-948-000 that the proceeding addressing that filing was the “MISO integration rate proceeding” and the correct venue in which to raise any claims related to the RTOR.** [n. 45 “Entergy Services and MISO refer to the filing made by MISO and the Entergy Operating Companies that proposed: (1) the Attachment O formula rates under the MISO Tariff for each of the Entergy Operating Companies; and (2) the proposal to establish the Entergy Transmission Pricing Zones. *See Entergy Services, Inc.*, Docket No. ER13-948-000 (TPZ Filing).”] . . . According to Entergy Services and MISO, the Commission addressed challenges to the RTOR in the [TPZ Order], and that decision cannot be collaterally attacked in this proceeding.” (emphasis added)). In any event, MISO (and Entergy) have never pointed to any proceedings other than the Entergy Cost Allocation Proceeding or the (consolidated) TPZ proceeding as the appropriate venue for its Section 205 rate increase proposal.

¹¹⁹ This information is required by 18 C.F.R. § 206(b)(9).

¹²⁰ *See Entergy Services, Inc.*, Recommendation to Terminate Settlement Proceedings, issued May 12, 2015 in Docket Nos. ER13-948, *et al.* (“The parties have spent approximately one year and ten months in an attempt to settle this matter. For this reason, the Settlement Judge recommends that the settlement process be terminated.”)

IX. DOCUMENTS INCLUDED WITH THIS COMPLAINT

The following documents are included with and in support of this Complaint:

Attachment: Notice of Compliant¹²¹

Exhibit A: Procedural History of the Filings, Arguments, and Orders Leading to the TPZ Rehearing Order

X. CONCLUSION

For the reasons set forth above, the Entergy Export Customers respectfully request that the Commission grant the relief requested in this Complaint.

Respectfully submitted,

/s/

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¹²¹ A form notice of complaint is required by 18 C.F.R. § 206(b)(10).

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Dated: May 20, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document on all parties named in this Complaint.

Dated at Birmingham, Alabama, this 20th day of May, 2015.

/s/ Jesse S. Unkenholz

Jesse S. Unkenholz

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Southern Company Services, Inc.,)	
KCP&L Greater Missouri Operations Company,)	
The Empire District Electric Company, and)	
Associated Electric Cooperative, Inc.,)	
)	
Complainants)	
)	
v.)	Docket No. EL15-_____
)	
Midcontinent Independent System Operator, Inc.,)	
)	
Respondent)	
)	

NOTICE OF COMPLAINT

(May _____, 2015)

Take notice that on May 20, 2015, pursuant to sections 309, 205 and 206 of the Federal Power Act (“FPA”), 16 U.S.C. 825h, 824d and 824e and Rule 206 of the Federal Energy Regulatory Commission’s (Commission) Rules of Practice and Procedure, 18 CFR 385.206, Southern Company Services, Inc., as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company, KCP&L Greater Missouri Operations Company, The Empire District Electric Company, and Associated Electric Cooperative, Inc. (collectively, Complainants), filed a formal complaint against Midcontinent Independent System Operator, Inc., as agent and tariff administrator of the MISO Open-Access Transmission Tariff (Respondent), alleging that Respondent has levied unlawful charges upon Complainants in violation of FPA Section 205 and its rates for transmission service are unjust, unreasonable, unduly discriminatory and preferential and in violation of established precedent under FPA Sections 205 and 206.

The Complainants certify that a copy of the complaint has been served on the Respondent.

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 CFR 385.211, 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 5 copies of the protest or intervention to the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

This filing is accessible on-line at <http://www.ferc.gov>, using the “eLibrary” link and is available for electronic review in the Commission’s Public Reference Room in Washington, DC. There is an “eSubscription” link on the website 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 _____, 2015.

Kimberly D. Bose,
Secretary

EXHIBIT A

PROCEDURAL HISTORY OF THE FILINGS, ARGUMENTS, AND ORDERS LEADING TO THE TPZ REHEARING ORDER

In the Entergy Cost Allocation Proceeding (Docket No. ER12-480), which established Attachment FF-6 to the MISO Tariff and its no-cost-sharing rule, the Commission issued the Entergy Cost Allocation Order on April 19, 2012 and the Second Entergy Cost Allocation Order, with the directive to ensure that the no cost sharing rule applied to all export customers (other than those that sink in PJM), on November 15, 2012.¹²² On September 24, 2012, Entergy, MISO, and ITC Holdings Corp. (“ITC”) proposed a new rate construct, under the assumption that Entergy would divest its transmission assets to ITC as part of its integration into MISO.¹²³ In short, once the proposed transaction was approved and the Entergy transmission assets became part of MISO, transmission service revenue requirements previously recovered under the Entergy OATT would be recovered under newly proposed portions of Attachment O of MISO’s Tariff.¹²⁴

On November 13, 2012 (two days **before** the Commission issued the Second Entergy Cost Allocation Order explicitly requiring MISO to ensure that the no-cost-sharing rule applied

¹²² The Commission issued further orders in the Entergy Cost Allocation Proceeding, including orders on rehearing requests filed in response to earlier orders, on July 11, 2013 (the Third Entergy Cost Allocation Order), with the Commission’s final letter orders accepting the proposed tariff revisions in Docket No. ER12-480 issued on October 22, 2014 and February 20, 2015. However, from and after the Second Entergy Cost Allocation Order (November 15, 2012), the Commission has remained consistent in all of its orders on the following two points: (1) the no-cost-sharing rule applies to export service just like all other transmission service (Second Entergy Cost Allocation Order at P 100) and (2) such issue was subject to and resolved in the Entergy Cost Allocation Proceeding (*see, e.g.*, TPZ Order at P 171 & n. 365).

¹²³ For ease of reference, this proceeding is referred to herein as the “ITC Transaction” proceeding. *See* Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of Section 305(a) of the Federal Power Act, filed September 24, 2012 in Docket Nos. ER12-2681, *et al.*

¹²⁴ *See generally, Id.*

to export service), AECI intervened in the ITC Transaction proceeding and filed comments.¹²⁵ Therein, AECI noted that the proposal would transition its service from the Entergy OATT to the MISO Tariff, that the MISO, Entergy, and ITC “admit that they intend to increase transmission rates,” and that they “have not provided any estimates of the actual charges that their proposed formula rate would produce.” As such, AECI requested “additional information to evaluate whether the expected increase in its point-to-point transmission rate with Entergy will be just and reasonable.”¹²⁶

After additional information (some of which was submitted as “privileged” by the applicants) was exchanged between the parties, on January 22, 2013, AECI filed further comments on the proposal, requesting, *inter alia*, that “the Commission should require MISO and ITC to confirm that the transition plan approved in Docket ER12-480 will apply to all of Entergy’s PTP transmission service customers,” going on to note that “Associated Electric is concerned that it will face a significant increase in its PTP transmission rate across the Entergy transmission system, in violation of the ‘no-cost-sharing’ principle of the transition plan submitted and approved in Docket No. ER12-480.”¹²⁷

In response to AECI’s arguments, in their answer, ITC and Entergy noted that “[t]o the extent that the concerns raised by Associated Electric and GMO have any validity, those concerns should be raised in the proceedings initiated by the Commission to review the rate effects of the Entergy Operating Companies’ integration into MISO.”¹²⁸ In other words,

¹²⁵ See Motion to Intervene and Comments of Associated Electric Cooperative, Inc., filed Nov. 13, 2012 in Docket Nos. ER12-2681, *et al.*

¹²⁶ *Id.* at 3.

¹²⁷ Comments and Protest of Associated Electric Cooperative, Inc., filed January 22, 2013 in Docket Nos. ER12-2681, *et al.* at 5.

¹²⁸ See Motion for Leave to Answer and Answer of the ITC Holdings Corp. and Entergy Corporation to Protests and Comments, filed February 22, 2013 in Docket Nos. ER12-2681, *et al.* at 62.

Entergy's and ITC's response to AECE's request that the Commission require them to confirm that export service from the Entergy Region would be subject to the resolution of the Entergy Cost Allocation Proceeding was essentially that such concerns should be voiced in the Entergy Cost Allocation Proceeding, where they were being addressed. In fact, as explained above, on November 15, 2012 in the Entergy Cost Allocation Proceedings, the Commission had ordered MISO to ensure that the no-cost-sharing rule applied to export service.¹²⁹

Despite the fact that *all* parties appeared to agree that the resolution of the issue was properly housed in the Entergy Cost Allocation Proceeding and the fact that in the Entergy Cost Allocation Proceeding, the Commission required MISO (and Entergy) to ensure that the no-cost-sharing rule applied to export service, on March 4, 2013 (nearly four months **after** the Commission ordered MISO to abide by the no-cost-sharing rule for export customers), AECE was compelled to file a reply to Entergy and ITC's Answer noting that:

Associated Electric has learned that MISO intends to treat Associated Electric's post-Transaction PTP transmission service as a "drive through" service under Section 2 of Schedule 7 of MISO's tariff [and that it] will be charged a MISO system-wide rate based on the facilities of both the pre-Transaction MISO and Entergy footprints. In contrast, all other Entergy customers will be charged a zonal rate (including other PTP transmission customers with a source or a sink in the Entergy footprint) based on the facilities in their specific zone and will receive the benefit of the "no-cost-sharing" principle of the transition plan submitted and approved in Docket No. ER12-480.¹³⁰

While these arguments were being filed in the ITC Transaction proceeding, on February 15, 2013 (three month **after** the Second Entergy Cost Allocation Order where the Commission required MISO to ensure that the no-cost-sharing rule applied to export customers as well), Entergy and MISO submitted their proposal for different transmission pricing zones ("TPZs")

¹²⁹ Second Entergy Cost Allocation Order at P 100.

¹³⁰ See Answer of Associated Electric Cooperative, Inc. to Answer of ITC Holdings Corp. and Entergy Corporation, filed March 4, 2013 in Docket Nos. ER12-2681 at 6-7.

within the Entergy Region in ER13-948. No specific mention was made in the TPZ filing that MISO would be implementing the no-cost-sharing rule for point-to-point transmission to points *inside* the Entergy Region, but would *not* be implanting the rule for the same type of service to an Entergy Region export interface, nor did Entergy or MISO seek Commission approval to deviate from the no cost-sharing rule embodied in MISO Attachment FF-6.¹³¹

On June 20, 2013, the Commission issued its order on these arguments and consolidated the ITC Transaction Proceeding with other proceedings regarding changes to the MISO Tariff to facilitate Entergy's proposed transition, including the TPZ Proceeding, ER13-948.¹³² In the TPZ Order, the Commission found that issues pertaining to cost allocation and rate design for point-to-point transmission service to an Entergy Region export interface were "being addressed currently in the Entergy Cost Allocation Proceeding."¹³³ The TPZ Order set the other pending issues for hearing and settlement proceedings.

Despite the Commission's assurances in the Entergy Cost Allocation Orders and now in the TPZ Order that the Entergy Export Customers' concerns about being allocated Legacy Region costs for export service were resolved in the Entergy Cost Allocation Proceeding, MISO

¹³¹ However, MISO and Entergy later argued that they *did* in fact propose this rate increase in the TPZ Proceeding (pursuant to Section 205). *See, e.g., Midcontinent Independent System Operator, Inc., Order Accepting Tariff Revisions*, 145 FERC ¶ 61,244 (2013) at P 23 & n. 45 ("Entergy Services and MISO argue that the protests of the RTOR in this proceeding constitute a collateral attack on the [TPZ Order] Citing various pleadings filed in the Entergy-ITC Rates [ER13-948, ER12-2681, and ER13-782, consolidated] and Entergy-ITC Merger Proceedings, **Entergy Services and MISO assert that it was clear from the substance of the filing in Docket No. ER13-948-000 that the proceeding addressing that filing was the "MISO integration rate proceeding" and the correct venue in which to raise any claims related to the RTOR.** [n. 45 "Entergy Services and MISO refer to the filing made by MISO and the Entergy Operating Companies that proposed: (1) the Attachment O formula rates under the MISO Tariff for each of the Entergy Operating Companies; and (2) the proposal to establish the Entergy Transmission Pricing Zones. *See* Entergy Services, Inc., Docket No. ER13-948-000 (TPZ Filing)."] . . . According to Entergy Services and MISO, the Commission addressed challenges to the RTOR in the [TPZ Order], and that decision cannot be collaterally attacked in this proceeding." (emphasis added)). In any event, MISO (and Entergy) have never pointed to any proceedings other than the Entergy Cost Allocation Proceeding or the (consolidated) TPZ proceeding as the appropriate venue for its Section 205 rate increase proposal.

¹³² *See* TPZ Order at 39.

¹³³ *Id.* at P 171 (referring to the proceeding in Docket No. ER12-480).

continued to insist that the Entergy Export Customers' service under Schedule 7 would still be subject to a MISO system-wide rate. Being so informed by the independent¹³⁴ administrator of the roughly 5,700 page region-wide tariff and assuming MISO was interpreting its tariff correctly,¹³⁵ Entergy Export Customers argued in rehearing requests to the TPZ Order that their concerns had not been laid to rest by the outcome of the Entergy Cost Allocation Proceeding. In fact, despite the Second Entergy Cost Allocation Order's directive to MISO to "ensure that the eight-year phase in period will apply to export and wheel-through transactions by external entities,"¹³⁶ AECI alerted the Commission the rate projections it continued to receive from MISO included Legacy Region costs and, as a result, AECI would still receive a "projected 87% rate increase . . . solely as a result of the actions of Entergy, ITC, and MISO."¹³⁷ Other Entergy Export Customers also filed rehearing requests of the TPZ Order, arguing that the massive rate increase MISO was preparing to levy upon them was "unjust and unreasonable . . . and is contrary to cost causation principles" due to the reallocation of Legacy Region costs.¹³⁸

Subsequently, the proposed Entergy and ITC transaction was withdrawn, ending Docket No. ER12-2681, though the other issues in the consolidated dockets remained.¹³⁹ On February

¹³⁴ See Order No. 2000 at [pp. 193, *et seq.*] ("[T]he principle of independence is the bedrock upon which the ISO must be built' and . . . this principle must apply to all RTOs . . . '[A]n RTO needs to be independent in both reality and perception.' We reaffirm both principles in the Final Rule.").

¹³⁵ Those rehearing requests did not assert that MISO was misapplying its tariff, as the instant Complaint does. Indeed, it appears that MISO (sometimes communicating through Entergy and other transmission owners) instituted an unpublished deviation from Attachment FF-6 that, in an unduly discriminatory and preferential fashion, maximizes costs for external loads for the benefit of internal loads – every dollar MISO can take from an export customer (necessarily sinking outside of MISO) is a dollar saved by MISO loads.

¹³⁶ See Request for Rehearing of Associated Electric Cooperative, Inc., filed July 22, 2013 in Docket No. ER12-2681 at 7 (quoting Second Entergy Cost Allocation Order at P 100).

¹³⁷ *Id.* at 9.

¹³⁸ See Request for Rehearing and Clarification of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and the Empire District Electric Company, filed July 22, 2013 in Docket Nos. ER12-2681, *et al.* at 5-10.

¹³⁹ See Motion to Withdraw Filings and Terminate Proceedings of the ITC MidSouth Operating Companies, filed December 13, 2013 in Docket Nos. ER12-2681 and ER13-782.

20, 2014 in the remaining consolidated dockets, the Commission granted rehearing of the TPZ Order, in part, and found “upon further consideration, we find that MISO’s proposed RTOR for service over the transmission system in the [Entergy Region] raises issues of material fact that cannot be resolved based on the record before us...” and that “based on the parties’ arguments on rehearing that the proposed RTOR for service over the transmission system in the [Entergy Region] has not been shown to be just and reasonable and may be unjust, unreasonable, and unduly discriminatory or preferential, or otherwise unlawful.”¹⁴⁰ Rehearing of the TPZ Rehearing Order are pending.¹⁴¹ Importantly, the Commission did not, on rehearing or elsewhere, revise or otherwise amend its holding in the TPZ Order that the principles that would govern cost allocation and rate design for point-to-point transmission service to Entergy Region export interfaces were addressed in the Entergy Cost Allocation Proceeding.¹⁴²

Entergy’s transition into MISO became effective in December 2013. MISO issued its first invoices to the Entergy Export Customers in early January 2014. The rate increase that MISO had indicated that it would assess on the Entergy Export Customers (though not through tariff language and without authorization from the Commission), which reflected a MISO system-wide rate, were included in such invoices. The Entergy Export Customers have been paying a “system-wide rate” under the MISO tariff since that time. To the knowledge of the

¹⁴⁰ TPZ Rehearing Order at P 75.

¹⁴¹ See Request for Rehearing of Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, and The Empire Electric Company of the February 20, 2014 Order under ER12-2681, *et al.*, filed in Docket Nos. ER12-2681-000, *et al.*, March 24, 2014.

¹⁴² Neither Entergy nor MISO sought rehearing of the critical finding that the Entergy Cost Allocation Proceeding was the time and place through which both cost allocation and rate design issues relevant to point-to-point exports were addressed. While AECI did, in its rehearing request, argue that its concerns had not been satisfied in the Entergy Cost Allocation Proceeding (because MISO persisted in declaring that it would assess a system-wide rate for export service even after being ordered not to) and, as a result, such concerns were properly subject to the TPZ rehearing proceeding (the only other proceeding related to the Entergy Transition where export rates were addressed), the Commission, in the TPZ Rehearing Order appears to have rejected this argument by AECI. See *supra* Complaint at n. 47.

Entergy Export Customers, this is the *only* system-wide rate MISO has assessed on *any* transmission customers since the effective date of Entergy's transition. MISO's failure to abide by the Commission's clear directives in the Entergy Cost Allocation Orders and the TPZ Orders and the MISO continues through the date of this filing.

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