



System Operator, Inc. (“MISO”) and certain MISO transmission owners (“MISO transmission owners”) (collectively, “Filing Parties”);<sup>2</sup> (ii) ITC’s Answer;<sup>3</sup> and (iii) Southern Regulators’ Response.<sup>4</sup> The various responses provide irrelevant arguments to support the Filing Parties’ unjust and unreasonable proposal to exclude from the Market Efficiency Project (“MEP”) category regionally beneficial economic projects operating between 100 kV and below 230 kV. Nor do they provide a sufficient rationale for the Commission to separate the overlapping issues presented in the Third Filing<sup>5</sup> and Economic Project Complaint.<sup>6</sup>

## I. MOTION TO ANSWER

The Commission generally prohibits answers to answers unless otherwise ordered by the decisional authority. The Commission accepts answers in circumstances where doing so will clarify the issues and otherwise assist the Commission in its decision-making.<sup>7</sup> This Answer will

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<sup>2</sup> *Answer of the Midcontinent Independent System Operator, Inc. and MISO Transmission Owners in Opposition to Motion to Consolidate of the Joint Protestors*, Docket No. ER20-1723, *et al*, filed on June 16, 2020 (“Filing Parties’ Answer”). The MISO transmission owners participating in the Filing Parties’ Answer are listed in footnote 2 of the Filing Parties’ Answer. In their Answer, the Filing Parties state that their Answer solely addresses the Joint Protestors’ Motion to Consolidate included the Joint Protestors’ Protest and they seek leave to file an additional answer later. *See* Filing Parties’ Answer at 2, n.3. Joint Protestors the same opportunity if the Filing Parties do in fact file an additional answer.

<sup>3</sup> *Motion for Leave to Answer and Answer of the ITC Companies*, Docket No. ER20-1724, *et al*, filed on June 16, 2020 (“ITC’s Answer”).

<sup>4</sup> *Motion for Leave to Respond and Response of the MISO South Regulators*, Docket No. ER20-1723, *et al*, filed on June 15, 2020 (“Southern Regulators Response”).

<sup>5</sup> *Midcontinent Independent System Operator, Inc. and the MISO Transmission Owners*, “Proposed Revisions to Tariff Module A, Attachment FF and New Attachments FF-7 to Expand and Clarify Market Efficiency Project Selection and Cost Allocation,” Docket Nos. ER20-1723-000 and ER20-1724-000 (Apr. 30, 2020)(“Third Economic Project Filing” or the “Filing”).

<sup>6</sup> *LSP Transmission Holdings II, LLC et al. v. Midcontinent Independent System Operator, Inc.*, Complaint, filed June 5, 2019 in Docket No. EL19-79 (“Economic Project Complaint”).

<sup>7</sup> *See, e.g., Midcontinent Indep. Sys. Operator, Inc.*, 158 FERC ¶ 61,128, at P 5 (2017)(accepting answers that provided information that assisted the Commission in its decision-making process); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 36 (2007)(permitting answers to answer where the Commission found the information assisted the Commission in its decision-making

clarify the issues raised by the Third Filing and Economic Project Complaint and the procedural option available to the Commission to remedy the continued failure of the Filing Parties to bring to the Commission a just and reasonable proposal.<sup>8</sup> Therefore, Joint Protestors request that the Commission accept the following Answer to the responsive pleadings filed by: (i) the Filing Parties; (ii) ITC; and (iii) the Southern Regulators.

## II. ANSWER

### A. Rejection Of The Section 205 Filing As Unjust And Unreasonable Is Appropriate

ITC asks that the Commission “dismiss” the Joint Protestors’ Protest on the claimed basis that “it seeks relief which collectively exceeds the scope of the Commission’s authority under either Section 205 or Section 206 of the Federal Power Act.”<sup>9</sup> ITC’s Answer seeking dismissal of the Protest has no basis in law or fact. First, ITC acknowledges that the “Joint Protestors ostensibly seek for the Commission to reject the MISO filing in its entirety . . . .”<sup>10</sup> There should be no confusion on this point. The Joint Protestors seek rejection of the Third Filing in its entirety. As ITC notes, and Joint Protestors recognize, under the court’s decision in *NRG Power Marketing LLC v. FERC*,<sup>11</sup> the Commission is limited in its ability to address a Section 205 filing that contains provisions the Commission finds unjust and unreasonable. In *NRG*, the court said that “Section 205 [of the Federal Power Act] does not allow FERC to suggest modifications

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process); *California Indep. Sys. Operator Corp.*, 125 FERC ¶ 61,384, at P 9 (2008)(accepting answer to protest because it aided the Commission’s understanding of the issues raised).

<sup>8</sup> *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,018, at P 15 (2013)(accepting answer that assisted in the decision-making process); *California Independent System Operator Corporation*, 105 FERC ¶ 61,284, at P 10 (2003)(accepting answer that clarified the issues).

<sup>9</sup> ITC’s Answer at 4.

<sup>10</sup> *Id.* at 5.

<sup>11</sup> 862 F.3d 108 (D.C. Cir. 2017)(“*NRG*”).

that result in an ‘entirely different rate design’ than the utility’s original proposal or the utility’s prior rate scheme.”<sup>12</sup> Assuming for purposes of argument that the *NRG* ruling would prohibit the Commission from lowering the voltage to 100 kV (under the presumption that would constitute an “entirely different rate design”) or that the Commission is prohibited from severing the unjust and unreasonable “immediate need” proposal as an unrelated tariff provision that under *NRG* would rise or fall on its own,<sup>13</sup> the Commission’s only option is to reject the Third Filing as a whole.<sup>14</sup> The Joint Protestors unequivocally asked for just that relief in their Protest.<sup>15</sup> Once the Third Filing is rejected, the Joint Protestors requested that the Commission then use its considerable authority under Section 206 to set the just and reasonable rate for economic projects between 100 kV and below 230 kV based on the Economic Project Complaint.

In an effort to conflate the Protest with the requested relief under the Economic Project Complaint, ITC mixes the two areas of relief and then argues that the Economic Project

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<sup>12</sup> *Id.*

<sup>13</sup> The limitations expressed by the court in *NRG* have not been further explored by the court or the Commission. *See e.g., California Indep. Sys. Operator, Inc.*, 171 FERC ¶ 61,120 (2020)(accepting one part but rejecting another part of CAISO proposed tariff revisions in the face of arguments that the Commission should accept the entire package). Viable arguments can be made that lowering the voltage threshold from the 230 kV proposed to 100 kV is not an “entirely new rate design.” In any event, any concern with violating *NRG* is in part of the fault of Filing Parties that seek to further hamstring the Commission’s responses to rate filings. They combine disparate rate provisions – in this case the changes to the voltage threshold for MEPs and the calculation of benefits with a request for an immediate need exemption – into a single rate filing. They then argue that no piece can be changed under *NRG*.

<sup>14</sup> This is precisely the approach the Commission took with the Filing Parties’ First Filing in Docket Nos. ER19-1124 and ER19-1125 filed on Feb. 25, 2019 (“First Filing”) and Second Filing in Docket Nos. ER20-857 and ER20-858 on Jan. 21, 2020 (“Second Filing”). *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,258 (2019)(“First Order Rejecting Filing”); *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,241 (2020)(“Second Order Rejecting Filing”).

<sup>15</sup> *Motion to Consolidate and Protest of LSP Transmission Holdings II, LLC, Cardinal Point Electric, LLC, LS Power Midcontinent, LLC, The Coalition of MISO Transmission Customers, The Industrial Energy Consumers of America and Gridliance Heartland LLC*, filed June 1, 2020 in Docket Nos. ER20-1723-000, et. al., and EL19-79-000 (unconsolidated) at 9 (“In any case, the Commission should reject the Third Economic Filing.”)(“Joint Protestors’ Protest”).

Complaint itself did not provide sufficient notice of the relief Joint Protestors’ seek in their Protest. To the contrary, the Economic Project Complaint establishes that the current cost allocation method for regionally beneficial economic projects operating between 100 kV and below 345 kV is unjust and unreasonable because such projects are treated as Other Projects and cost allocated exclusively to the zone in which the project is located, regardless of beneficiaries.<sup>16</sup> As relief under the Economic Project Complaint, Complainants requested that the Commission implement a new cost allocation method for such economic projects based on who benefits from the projects.<sup>17</sup>

That relief is well within the Commission’s authority. Once the Commission finds an existing rate unjust and unreasonable, in adopting a just and reasonable rate under Section 206 of the Federal Power Act, the Commission is not limited to the matters in a complaint. As the Commission said in *Old Dominion Electric Cooperative, et al. v. Virginia Electric and Power Company*,<sup>18</sup> under Section 206, once the Commission finds that the existing rate is unjust and unreasonable, the Commission’s statutory responsibility under Section 206 is to “set the just and reasonable rate.”<sup>19</sup> For that reason, the Commission said “it is not limited to adopting only a remedy put forward in the [c]omplaint or in briefing.”<sup>20</sup> Rather, pointing to oft-cited authority,<sup>21</sup>

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<sup>16</sup> The Commission has twice found such a cost allocation methodology unjust and unreasonable. *First Order Rejecting Filing*, 167 FERC ¶ 61,258; *Second Order Rejecting Filing*, 170 FERC ¶ 61,241.

<sup>17</sup> Economic Project Complaint at 22.

<sup>18</sup> *Old Dominion Electric Cooperative, et al., v. Virginia Electric and Power Company*, 161 FERC ¶ 61,055 (2017)(“ODEC”).

<sup>19</sup> *Id.* at P 28.

<sup>20</sup> *Id.*

<sup>21</sup> *Niagara Mohawk Power Corp. v. Fed. Power Comm’n*, 379 F.2d 153, 159 (D.C. Cir. 1967) (finding that agency discretion is “at zenith” when fashioning remedies).

the Commission concluded that it “has considerable discretion in fashioning remedies and can base that remedy on the record developed.”<sup>22</sup>

There is a considerable record not only in this proceeding, but in the First Filing, Second Filing, and the Economic Project Complaint upon which the Commission can base its remedy. Joint Protestors provided the Commission a road map to incorporate certain aspects of the three prior filings that could be found just and reasonable as appropriate relief under the Section 206 Economic Project Complaint. In the unlikely event that the Commission needs additional information, the Commission has various processes at its disposal to gather further information.<sup>23</sup> It is a strange argument indeed that a proponent of the Section 205 Filing would argue that the Commission has no basis under Section 206 to incorporate portions of a rate design that the proponents asserted were just and reasonable.

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<sup>22</sup> *Id.*

<sup>23</sup> For the same reason, once the Commission finds the existing rate unjust and unreasonable, the Commission is not limited by its previous statements suggesting that a 230 kV threshold for MEP would be appropriate. *ODEC*, 161 FERC ¶ 61,055 at P 32 (rejecting argument that the Commission could only approve a sub-zonal cost allocation under Section 206 if the tariff already contemplates it or the utility proposes such treatment because such a limitation is inconsistent with the Commission’s “obligat[ion] to establish a just and reasonable rate when it determines that the existing rate is unjust and reasonable.”). In any event, any such statements were made in the context of the Commission’s decision to reject a category of economic projects proposed by the Filing Parties – what the Filing Parties called Local Economic Projects operating between 100 kV and below 230 kV – because the costs were not allocated to those that benefit consistent with cost causation principles. The Economic Project Complaint squarely places in front of the Commission under Section 206 the issue of how regionally beneficial economic projects between 100 kV and below 230 kV should be planned and the costs of those projects allocated to those that benefit.

**B. The Issues Raised In The Economic Project Complaint Should Be Considered In Conjunction With This Third Attempt At A Just And Reasonable Approach To MEPs Regardless Of Whether The Commission Formally Consolidates The Two Proceedings**

The Commission should reject the attempt to piecemeal its review of the issues related to MISO's MEP category, particularly the justness and reasonableness of the existing or proposed voltage threshold. The Joint Protestors moved to consolidate the Economic Project Complaint with the Third Filing to enable the Commission to consider the issues common to the Third Filing and the Economic Project Complaint in one order. The proponents of the Third Filing have made it clear that they will not address lower voltage regionally beneficial projects without a Commission mandate under Section 206. The Commission rejected both previous attempts based specifically on the fact that there were identifiable regionally beneficial economic projects below the 230 kV threshold proposed in those filings, the very issue raised in the Economic Project Complaint under Section 206. The Third Filing perpetuates the same deficiencies.

Even if, however, the Commission does not formally consolidate proceedings,<sup>24</sup> when the facts warrant, the Commission acts on separate proceedings in one order.<sup>25</sup> The facts warrant the Commission acting on the Economic Project Complaint and the Third Filing in one order,

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<sup>24</sup> *California Pub. Utils. Commission, et. al*, 132 FERC ¶ 61,047, at PP 14, 21 (2010) (“rejecting formal consolidation even though that “both proceedings are petitions for declaratory order involving the same issues of law and fact, the same parties, and the same CPUC orders” because there was no need for formal consolidation when the Commission was addressing the two petitions in this order and not ordering a hearing.)

<sup>25</sup> *Terra-Gen Dixie Valley, LLC, TGP Dixie Development Company, LLC, and New York Canyon, LLC Green Borders Geothermal, LLC v. Terra-Gen Dixie Valley, LLC*, 132 FERC ¶ 61,215, at P 44 (2010)(because declaratory order and complaint “arose out of factual circumstances that are identical in all material respects,” the Commission addressed proceedings together, but because a formal hearing was not appropriate, did not consolidate the two dockets.); *see also PacifiCorp, et. al.*, 137 FERC P 61,151 (2011) (not consolidating but addressing in one order Section 205 filings filed by multiple parties involving revisions to the revised *Owners Coordinated Operations Agreement to the California Oregon Intertie.*).

whether the two proceedings are formally consolidated or not. The two proceedings involve common issues – the appropriate voltage threshold for MEPs and the just and reasonable planning process and cost allocation method for regionally beneficial economic projects operating between 100 kV and below 230 kV. The Economic Project Complaint requests that the voltage threshold for MEPs be set at 100 kV and requests that the Commission “require MISO to propose a new cost allocation method for economic enhancements between 100 kV and below 345 kV – one that allocates costs to identified beneficiaries consistent with the Commission’s long-standing cost allocation precedent.”<sup>26</sup> The Filing Parties, however, propose that regionally beneficial economic projects operating between 100 kV and below 230 kV remain relegated to the amorphous category called “Other Projects,” a category that for purposes of cost allocation does not consider who benefits from the project but instead automatically allocates costs to the zone where the “Other Project” is physically located.<sup>27</sup>

*Columbia Gulf*,<sup>28</sup> cited by the Filing Parties, does not prevent the Commission from consolidating the proceedings or considering the common issues in one order. In *Columbia Gulf*, the Commission refused to consolidate a tariff proceeding with five other tariff filings; filings which had already either been “accepted or conditionally accepted.”<sup>29</sup> The Economic Project Complaint is pending (and has been pending for over a year, presumably in the futile hope that the Filing Parties would propose to include regionally beneficial economic projects operating

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<sup>26</sup> Economic Project Complaint at 22.

<sup>27</sup> The Commission rejected this cost allocation approach in response to the First Filing and Second Filing. *First Order Rejecting Filing*, 167 FERC ¶ 61,258; *Second Order Rejecting Filing*, 170 FERC ¶ 61,241.

<sup>28</sup> *Columbia Gulf Transmission Co.*, 121 FERC ¶ 61,145 (2007)(“Columbia Gulf”).

<sup>29</sup> *Id.* at P 21.

between 100 kV and below 230 kV in the MEP category by lowering the voltage threshold for MEPs to 100 kV).

Further, in *Columbia Gulf*, the Commission determined that it could accept the tariff sheets filed independent of the other five proceedings.<sup>30</sup> In contrast, it would not be just and reasonable to accept a 230 kV voltage threshold for MEPs as proposed in this proceeding, thereby relegating economic projects with regional benefits below this voltage threshold to the “Other Projects” category, with costs allocated inappropriately.

Finally, there should be no concerns that formally consolidating the two proceedings or considering the common issues in one order would complicate burden of proof issues. As set forth in the previous section, the Commission should reject the Third Filing under Section 205 and act on the Economic Project Complaint under Section 206, thereby finally setting the just and reasonable rate for the MEP category.

**C. The Economic Project Complaint Establishes That The Current Cost Allocation Method Applicable To Regionally Beneficial Economic Projects Operating Between 100 kV and Below 345 kV Is Not Just And Reasonable**

**1. Southern Regulators Misrepresent The Economic Project Complaint**

The Southern Regulators argue that “LS Power is wrong in asserting that MISO has no cost allocation methodology for lower-voltage projects.”<sup>31</sup> This is a complete misrepresentation of the Complaint and Joint Protestors’ position. The specific issue raised in the Complaint, and relevant to the Third Filing, is that the current MISO Tariff does not include a just and reasonable cost allocation methodology for *regionally beneficial* economic projects operating between 100 kV and below 230 kV. The evidence presented in the Complaint establishes that

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<sup>30</sup> *Id.*

<sup>31</sup> Southern Regulators Response at 4.

there are economic projects operating below 230 kV that have regional benefits.<sup>32</sup> As the Southern Regulators acknowledge, under the current MISO Tariff, these regionally beneficial economic projects are categorized as “Other Projects”<sup>33</sup> and, as such, are allocated solely to the zone where the project is allocated, rendering the cost allocation method inconsistent with fundamental cost allocation principles.

The Third Filing, meant to “add clarity regarding the identification and cost allocation of transmission facilities providing regional economic benefits to MISO customers”,<sup>34</sup> does nothing to address the unjust and unreasonable provisions of the MISO Tariff. Under the Third Filing, the MISO Tariff will continue to lack clear criteria and procedures for identifying and evaluating regionally beneficial economic projects operating below 230 kV, making it unlikely that these regionally beneficial economic projects, which would have tangible ratepayer benefits, will be identified and move forward in the planning process. Rather than fix this known problem,<sup>35</sup> the Filing Parties want to now ignore it because the Commission has twice rejected Filing Parties’ proposed solution that would identify and evaluate regionally beneficial economic projects operating below 230 kV but would continue to allocate these projects solely to the zone where they are allocated precisely because it is unjust and unreasonable.<sup>36</sup>

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<sup>32</sup> Economic Project Complaint at 11-13.

<sup>33</sup> Southern Regulators Response at 4 (citing MISO Tariff, Att. FF, Section III.A.2.k (defining “Other Projects”).

<sup>34</sup> Third Filing at 1-2.

<sup>35</sup> See Economic Project Complaint at 15 (citing MISO, “Cost Allocation White Paper” at 6 (Revised Nov. 9, 2015), *available at*, <https://cdn.misoenergy.org/20151118%20RECBTF%20Item%20XX%20Cost%20Allocation%20Issue%20Summary%20Paper%20clean90105.pdf>).

<sup>36</sup> See *First Order Rejecting Filing*, 167 FERC ¶ 61,258; *Second Order Rejecting Filing*, 170 FERC ¶ 61,241.

The Southern Regulators attempt to defend the status quo by asserting that protests are “based on the mistaken notion that Commission policy requires that all customers that benefit from a transmission project must pay for that project.”<sup>37</sup> The Commission’s previous two orders address this argument – where the Filing Parties can calculate the benefits of projects, it is unjust and unreasonable not to do so.<sup>38</sup> This is not a situation where it is impossible or even difficult to calculate the benefits of regionally beneficial economic projects operating between 100 kV and below 230 kV. To the contrary, the Filing Parties twice proposed benefit metrics that would do just that.<sup>39</sup> Rather than remedy the problem in this Third Filing, *i.e.* lowering the voltage threshold for MEPs to 100 kV, the Filing Parties propose nothing. It is time for the Commission to act.<sup>40</sup>

**D. Competition Has Delivered And Will Continue To Deliver Tangible Ratepayer Benefits Regardless Of Project Type And Size**

In its Answer, which references its Protest, ITC raises several concerns about competition generally as well as competition as applied specifically to regionally beneficial economic projects operating below 345 kV which are well beyond the scope of the instant proceeding.<sup>41</sup> ITC’s concerns, however, are not only unfounded, its arguments distort the record on the benefits that competition delivers. LS Power has responded to many of these arguments in prior

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<sup>37</sup> Southern Regulators Response at 3.

<sup>38</sup> *See First Order Rejecting Filing*, 167 FERC ¶ 61,258 at PP 57-62; *Second Order Rejecting Filing*, 170 FERC ¶ 61,241 at PP 59-68.

<sup>39</sup> *Id.*

<sup>40</sup> The Southern Regulators also argue that this result is okay because it is the result of the stakeholder process and therefore due deference. *See* Southern Regulators at 5. The Commission should not give deference to a stakeholder process that simply chooses not to fix a problem in order to avoid the Commission’s requirement that regional projects be selected through a competitive process.

<sup>41</sup> ITC’s Protest at 4-8; ITC’s Answer at 6-7.

proceedings.<sup>42</sup> Joint Protestors respond here to some of the more specific points, including ITC’s argument that the Commission should remove the connection between competition and cost allocation and its argument that the benefits of competition do not exist for regionally beneficial economic projects operating below 345 kV.

### **1. The Commission Cannot Establish Just And Reasonable Rates In The Absence Of Competition**

All evidence to date establishes that in the absence of competition the Commission likely cannot meet its statutory obligation to ensure just and reasonable rates. If the Commission is to “remove the link between competition and cost allocation”<sup>43</sup> experiences with competition since Order No. 1000 was implemented demonstrate that the Commission should require virtually all transmission projects be eligible for competition, including MISO Other Projects, regardless of how they are cost allocated.<sup>44</sup> Removing the tie between regional cost allocation and beneficial

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<sup>42</sup> See, e.g., Economic Project Complaint at 18-22; *Motion for Leave to Answer and Answer of Complainants*, Docket No. EL19-79-000 at 20-21 (filed on Aug. 13, 2019); *Supplemental Comments of LSP Transmission Holdings, LLC, Competitive Transmission Development Technical Conference*, Docket No. AD16-18-000 (filed on June 7, 2019); *Responsive Supplemental Comments of LSP Transmission Holdings, LLC, Competitive Transmission Development Technical Conference*, Docket No. AD16-18-000 (filed on Sept. 11, 2019)(“Responsive Supplemental Comments”).

<sup>43</sup> See ITC’s Answer at 6-7 (encouraging the Commission to “reconsider whether tying application of an Order No. 1000 solicitation process to regional cost allocation remains just and reasonable in light of the data accumulated since Order No. 1000 was implemented.”).

<sup>44</sup> Section 206 of the Federal Power Act tasks the Commission with ensuring rates and practices are just and reasonable. In April 2019, The Brattle Group released a report, *The Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value* (“Brattle Competition Report”) that lays out, among other things, the benefits of competitive processes held up to that point and the potential benefits to ratepayers if competition were expanded. Following the release of the Brattle Competition Report, Concentric Energy Advisors released a report, *Report: Building New Transmission: Experience To-Date Does Not Support Expanding Solicitations* (“Concentric Report”), criticizing the Brattle Competition Report. ITC relies extensively on the Concentric Report in its Protest. The Brattle Group thoroughly reviewed the Concentric Report and responded in detail in a follow-up report issued in August 2019, *Response to Concentric Energy Advisors’ Report on Competitive Transmission*. Joint Protestors encourage the Commission to review the Brattle Response, which is provided in full in LS Power’s Responsive Supplement Comments filed in Docket No. AD16-

competition would also eliminate the incentive that has led incumbent transmission owners to skew cost allocation to limit competition<sup>45</sup> and shift towards constructing projects outside of the regional planning process.<sup>46</sup>

The record available to date unequivocally demonstrates that competition results in benefits to ratepayers, and that those benefits only exist when there is competition. As explained in the Economic Project Complaint, the benefits of competition are clear from the MISO selection reports for the two competed projects, the Duff-Coleman EHV 345 kV Project (“Duff-Coleman Project”) approved in MTEP15 and the Hartburg-Sabine Junction 500 kV Project (“Hartburg-Sabine Junction Project”) approved in MTEP17, particularly when compared to an MEP project, a portion of the Huntley to Wilmarth 345 kV Project (“Huntley to Wilmarth Project”) approved in MTEP16, handed in part to an ITC Company as a result of a state right of first refusal.<sup>47</sup> In MISO’s first competitive process for the Duff-Coleman Project, 10 of the 11 proposals included some form of cost containment.<sup>48</sup> ITC’s Answer is silent as to whether and

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18-000. There is no legitimate debate that competition results in lower rates and overall better transmission solutions.

<sup>45</sup> See, e.g., *Old Dominion Elec. Coop.*, 898 F.3d 1254 (D.C. Cir. 2018)(vacating the Commission’s approval of a cost allocation method that allocated all the costs of certain projects to the zone where the project was located even though the projects were known to have regional benefits in some circumstances); *Complaint of Coalition of MISO Transmission Customers, Industrial Energy Consumers of America, and LS Power Midcontinent, LLC, and Request for Fast Track Processing*, filed in Docket No. EL20-19-000 on Jan. 21, 2020 (Complaint demonstrating that MISO’s current cost allocation method for Baseline Reliability Projects, which was changed from line outage distribution factor to allocating 100% of the costs of a BRP solely to the zone where the project is located following the passage of Order No. 1000, is unjust and unreasonable).

<sup>46</sup> For example, in 2019, investment in Supplemental Projects, projects planned by transmission owners in PJM, totaled \$4.8 billion, while MISO’s MTEP19 included 320 Other Projects with a total value of \$2.8 billion.

<sup>47</sup> Economic Project Complaint at 19-22.

<sup>48</sup> MISO Selection Report, “Duff-Coleman EHV 345 kV Competitive Transmission Project” at 36 (Dec. 20, 2016), available at <https://cdn.misoenergy.org/DuffColeman%20EHV%20345kv%20Selection%20Report82339.pdf>

what form of binding cost containment it agreed to for its portion of the Huntley to Wilmarth Project. In its first competitive process MISO ultimately selected an LS Power affiliate's proposal because it included "an array of cost-containment features that lower risks and constrain costs to ratepayer over time" and would "provide very good value to ratepayers."<sup>49</sup> Republic's winning proposal included a cap on ROE, capital structure, implementation costs, and inflation rate. Did ITC agree to any of these cost containment measures for its portion of the Huntley to Wilmarth Project?

Two years later MISO held a second competitive process for another MEP, the Hartburg-Sabine Junction Project. MISO received 12 proposals, of which 11 included some form of cost containment.<sup>50</sup> The competitive transmission market advanced with this process, as more participants offered a variety of cost containment proposals. Only with competitive pressure do we see the inclusion of cost containment proposals, which deliver tangible ratepayer benefits in the form of lower costs and reduced risk. None of these consumer-friendly cost containment measures were offered by ITC in the absence of competition.

Competition also results in innovative project designs, such as new technologies; optimized routing to reduce permitting costs; innovative approaches to contracting and cost-control mechanisms; and innovative partnerships and financial structures.<sup>51</sup> The Brattle

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("Duff-Coleman Selection Report"). An ITC affiliate, ITC Midcontinent Development, LLC ("ITC Midcontinent Development"), submitted a proposal as well.

<sup>49</sup> *Id.* at 36. Republic Transmission, LLC ("Republic"), the selected developer, is an affiliate of LS Power.

<sup>50</sup> MISO Selection Report, "Hartburg-Sabine Junction 500 kV Selection Report (released Nov. 27, 2018), available at, <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf> ("Hartburg-Sabine Junction Selection Report"). ITC Midcontinent Development again submitted a proposal, this time with Hunt Transmission Services, L.L.C.

<sup>51</sup> See Brattle Competition Report at 10-11 and Tables 15-17.

Competition Report estimates that “competitively-developed transmission projects have been proposed at a cost that, on average, has been about 40% below” initial cost estimates from ISOs and RTOs (MISO, SPP, CAISO, Alberta, and Ontario) or between selected proposal and the lowest cost proposal from the incumbent transmission owner (PJM and NYISO).<sup>52</sup>

Despite these benefits, ITC argues that the benefits of competition are uncertain and outweighed by the costs of running the competitive process.<sup>53</sup> ITC’s position is not a surprise and fits the pattern of transmission owners opposing competition.<sup>54</sup> Incumbent transmission owners have an interest in limiting, or eliminating if possible, competition for transmission. This effort to limit competition has only intensified as incumbent transmission owners have not demonstrated an ability to compete when projects are competitively awarded, particularly when cost containment is taken into account.<sup>55</sup> The Commission should focus instead on the actual results of the competitive processes as well as the results where there is not a competitive process.

## **2. Benefits Of Competition Exist Regardless Of Voltage**

Turning to comments specific to competition for regionally beneficial economic projects operating below 345 kV, ITC’s arguments lack merit and should be rejected. First, ITC asserts, without any evidence, that “the lower relative cost of sub-230 kV MEPs further limits the potential absolute amount of cost savings which non-incumbent developers could theoretically

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<sup>52</sup> *Id.* at 29.

<sup>53</sup> ITC’s Answer at 6.

<sup>54</sup> *See* Exhibit A of LS Power’s Responsive Supplemental Comments filed in Docket No. AD16-18-000 for a partial list of various efforts of incumbent transmission owners or their affiliates to oppose additional competition for transmission facilities.

<sup>55</sup> In Docket No. ER19-2915 the Commission accepted a PJM stakeholder-initiated mandate that PJM compare the expected ratepayer costs, accounting for any binding cost containment, in determining the selected developer. *PJM Interconnection, L.L.C.*, 170 FERC ¶ 61,243 (2020).

deliver . . .” While the lower cost of a project may result in “less” savings, they are still savings and those savings will add up over time. In SPP, when SPP sought competitive proposals for a project SPP estimated to cost nearly \$17 million, it received 11 proposals, including one with a binding cost commitment of less than \$8 million. In addition to pure cost savings, as noted above, competition promotes innovative project design and engineering.<sup>56</sup> Those benefits apply regardless of the size of the project.

Second, ITC argues that competition for these projects would “prevent the achievement of timely in-service dates.”<sup>57</sup> ITC’s main point of contention appears to be the length of the competitive solicitation process. ITC presumes that the time spent during the competitive solicitation process is essentially wasted time notwithstanding that the projects are MEPs which are measured against long-term benefits. In this regard, any delay in an in-service date to hold a competitive process would be calculated into whether the proposed project meets the market efficiency thresholds. In addition, even a cursory review of the MISO selection reports shows that many of the participating developers submitted well-developed proposals that included detailed project design, procurement, and routing plans.<sup>58</sup> For instance, in preparing its proposal for the Duff-Coleman EHV 345 kV project, Republic included complete routing studies and “had taken proactive steps to increase certainty by acquiring some of the necessary land rights” a factor noted by MISO in its selection of Republic’s proposal.<sup>59</sup> MISO listed the Duff-Coleman

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<sup>56</sup> See Brattle Competition Report 1-2, 10-11 (citing the PJM Artificial Island competitive process as an example where developers proposed “innovative lower-voltage design options that addressed all the needs identified by PJM at substantially lower costs and reduced constructability risk.”).

<sup>57</sup> ITC’s Answer at 6.

<sup>58</sup> See Duff-Coleman Selection Report; Hartburg-Sabine Junction Selection Report.

<sup>59</sup> Duff-Coleman EHV 345 kV Selection Report at 41.

Project's required in-service date as January 1, 2021. Republic energized and transferred the Duff-Coleman Project to MISO on June 11, 2020, well ahead of the required in-service date notwithstanding that its proposal contained a binding cost cap, as well as an ROE cap inclusive of incentives and a capital structure cap.<sup>60</sup> ITC's Answer failed to include the specifics regarding its binding cost containment, ROE and capital structure caps.

In addition, nothing prevents MISO and its stakeholder from considering ways to decrease the time it takes to conduct the competitive process, particularly for regionally beneficial economic projects operating below 230 kV that may be less complex. MISO has established its capability to evaluate multiple proposals. Many of the concerns raised by ITC and others about competitive processes could be addressed through reforms and improvements to the process. Given the definitive benefits of competition to consumers, the Commission's mandate to ensure just and reasonable rates not only prevents the entrenched incumbent only transmission development paradigm begged for by ITC, it requires the Commission to ask: why are so few transmission additions being subjected to competition and what must the Commission do to ensure more competition?

### **III. CONCLUSION**

For the foregoing reasons, the Joint Protestors request that the Commission accept this Answer, reject the Third Filing and grant the Economic Project Complaint.

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<sup>60</sup> See MISO, *Notification of Effective Date for Tariff Sheets*, filed in Docket No. ER20-1167-000 on June 15, 2020.

June 24, 2020

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

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

Dated at Washington, DC this 26<sup>th</sup> day of June 2020.

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