

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

Coalition of MISO Transmission Customers,
Industrial Energy Consumers of America,
LS Power Midcontinent, LLC
Petitioners,

v.

Federal Energy Regulatory Commission,
Respondent.

No. _____

PETITION FOR REVIEW

Pursuant to Section 313 of the Federal Power Act, 16 U.S.C. § 825~~l~~ and Rule 15(a) of the Federal Rules of Appellate Procedure (“FRAP”), Coalition of MISO Transmission Customers, Industrial Energy Consumers of America, and LS Power Midcontinent, LLC (collectively “Petitioners”), hereby petition the Court for judicial review of the following orders issued by Respondent, Federal Energy Regulatory Commission (“Commission”):

1. *Coalition of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, Order Denying Complaint, Docket No. EL20-19-000, 172 FERC ¶ 61,099 (July 28, 2020) (“July 2020 Order”); and
2. *Coalition of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, Notice of Denial of Rehearing by Operation of Law, Docket No. EL20-19-001, 172 FERC ¶ 62,179 (September 28, 2020) (“September 2020 Order”).

Copies of these orders are attached hereto as **Exhibit A** and **Exhibit B**, respectively. The jurisdiction and venue of this Court is established by FPA Section 313(b), 16 U.S.C. § 825l(b).

In the July 2020 Order, the Commission rejected the complaint filed by Petitioners challenging the location-based cost allocation method for Baseline Reliability Projects, a category of reliability projects that are planned by the Midcontinent Independent System Operator, Inc. (“MISO”) to address the region’s reliability needs. On August 27, 2020, Petitioners timely sought rehearing of the Commission’s July 2020 Order. Petitioners’ request for rehearing was denied by operation of law in the September 2020 Order. 16 U.S.C. § 825l(a) (2018); 18 C.F.R. § 385.713 (2019); *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc). The Petitioners are thereby aggrieved by FERC’s rulings in the above-referenced orders and the above-referenced orders are ripe for review.

Respectfully submitted,

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Dated: October 16, 2020

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No. _____

**CORPORATE DISCLOSURE
STATEMENTS OF PETITIONERS**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure (“FRAP”) and Circuit Rule 26.1 of this Court, Petitioners hereby submit their respective disclosure statements:

Coalition of MISO Transmission Customers (“CMTC”) is a continuing ad hoc association of large industrial and commercial end-users of electricity in the Midwest operated for the purposes of representing the interests of industrial energy consumers before regulatory, judicial, and legislative bodies. CMTC does not issue securities to the public and is not owned by any publicly held company.

Industrial Energy Consumers of America (“IECA”) is a nonpartisan association of leading manufacturing companies with \$1.1 trillion in annual sales, over 4,200 facilities nationwide, and with more than 1.8 million employees. It is an

organization created to promote the interests of manufacturing companies through advocacy and collaboration for which the availability, use and cost of energy, power or feedstock play a significant role in their ability to compete in domestic and world markets. IECA does not issue securities to the public and is not owned by any publicly held company.

LS Power Midcontinent, LLC (“LS Power Midcontinent”) is transmission development company that is a qualified developer in MISO. LS Power Midcontinent is a member of the LS Power group of companies, which, among other things, is dedicated to delivering ratepayer value through participation in transmission project competition. LS Power Midcontinent is an indirect subsidiary of LS Power Associates, L.P. (“LS Power Associates”), which is managed by LS Power Development, LLC (“LS Power Development”), its general partner. None of LS Power Midcontinent, LS Power Associates, or LS Power Development is publicly held or publicly traded. No publicly held company holds a greater than 10% ownership interest in LS Power Midcontinent, LS Power Associates, or LS Power Development.

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CERTIFICATE OF SERVICE

I hereby certify that on October 16, 2020, a copy of the foregoing Petition for Review was served by email upon each person designated on the official service list maintained by the Secretary of the Federal Energy Regulatory Commission in the proceedings below. A file-stamped copy of the Petition for Review will be served upon Respondent, pursuant to 18 C.F.R. § 385.2012, at the following addresses *via* first-class mail:

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EXHIBIT A TO PETITION FOR REVIEW

*Coalition of MISO Transmission Customers, et al. v.
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Order Denying Complaint,

Docket No. EL20-19-000,

172 FERC ¶ 61,099

(July 28, 2020)

172 FERC ¶ 61,099
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
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and James P. Danly.

Coalition of MISO Transmission Customers
Industrial Energy Consumers of America
LS Power Midcontinent, LLC

Docket No. EL20-19-000

v.

Midcontinent Independent System Operator, Inc.

ORDER DENYING COMPLAINT

(Issued July 28, 2020)

1. On January 21, 2020, Coalition of MISO Transmission Customers, Industrial Energy Consumers of America, and LS Power Midcontinent, LLC (LS Power Midcontinent) (collectively, Complainants) filed a complaint (Complaint) against Midcontinent Independent System Operator, Inc. (MISO), alleging that MISO's current location-based cost allocation method in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff) for Baseline Reliability Projects (BRPs) is not just and reasonable because it does not identify the beneficiaries of each BRP in a manner that is roughly commensurate with the BRP benefits received. Complainants also ask the Commission to direct MISO to replace the current BRP cost allocation method with the line outage distribution factor (LODF) method that MISO previously used, which, Complainants argue, is just and reasonable and should be in place going forward until and unless the Commission approves an alternative cost allocation method. In this order, for the reasons discussed below, we deny the Complaint.

I. Background

2. Attachment FF of the MISO Tariff defines BRPs as "Network Upgrades identified in the base case as required to ensure that the Transmission System is in compliance with applicable [North American Electric Reliability Corporation (NERC)] reliability standards and reliability standards adopted by Regional Reliability Organizations and

applicable within the Transmission Provider Region.”¹ The Tariff also states that BRPs “include projects that are needed to maintain reliability while accommodating the ongoing needs of existing Market Participants and Transmission Customers” and “may consist of a number of individual facilities that in the judgment of the Transmission Provider constitute a single project for cost allocation purposes.”² The MISO Tariff assigns BRP costs to the transmission pricing zone in which the BRP is located.³

3. The Commission first accepted the BRP category in 2006.⁴ At that time, if a BRP had either (1) a project cost of \$5 million or greater or; (2) a project cost under \$5 million that is 5% or more of the constructing transmission owner’s net transmission plant, then MISO allocated the costs of the BRP based upon its voltage level. Specifically, MISO allocated 100% of the costs of BRPs with a voltage level of 100 kV through 344 kV to impacted transmission pricing zones⁵ based upon an LODF analysis.⁶ For BRPs with a voltage level of 345 kV or above, MISO allocated 20% of the costs on a postage stamp

¹ MISO, FERC Electric Tariff, Att. FF, § II.A.1 (78.0.0).

² *Id.*

³ MISO FERC Electric Tariff, Att. FF, § III.A.2.c (78.0.0).

⁴ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, *order on reh’g*, 117 FERC ¶ 61,241 (2006).

⁵ Transmission pricing zones are the pricing zones that MISO uses to allocate revenues for services, such as Reactive Supply and Voltage Control. MISO, FERC Electric Tariff, Module A, § II.1.T, Definitions-T (38.0.0).

⁶ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 28. According to Complainants:

[t]he LODF methodology is a sensitivity analysis measuring how a change in a line’s status (in this case the [BRP]) affects the power flows on other lines in the system, thereby determining who benefits from that [BRP]. The process involves comparing flows on monitored elements before and after a system upgrade to measure the relative impact on existing facilities. Impacted facility owners are then assigned costs based on the normalized percentage impact, aggregated to the Transmission Pricing Zone (TPZ) level.

basis and 80% to impacted pricing zones based on an LODF analysis.⁷ If a BRP did not meet one of the two cost thresholds, its costs would be allocated entirely to the transmission pricing zone in which it was located, regardless of voltage level.

4. In 2013, the Commission accepted MISO's proposal to change the BRP cost allocation method so that it now allocates all BRP costs to the transmission pricing zone(s) where the transmission project is located (local pricing zone).⁸ To support this cost allocation method, MISO argued that "the primary benefits of [BRPs] are realized at the local level" and that "MISO's adoption of project categories such as [Market Efficiency Projects], which are evaluated at the subregional and regional level, and [Multi-Value Projects], which are evaluated at the regional level on a portfolio, rather than individual basis, has greatly diminished the role of [BRPs] in providing subregional and region-wide benefits."⁹ MISO also argued that, since it adopted the MISO Transmission Expansion Plan (MTEP) process in 2006, 80% of the BRPs approved had at least 75% of their costs allocated to the transmission pricing zone where the BRP is located and more than half of all approved cost-shared BRPs had more than 90% of the costs allocated to the transmission pricing zone where the project is located.¹⁰ Additionally, MISO argued that only 17 of the 78 BRPs approved during this period received the 20% postage stamp regional cost sharing.¹¹ Furthermore, MISO argued that it would pursue a Market Efficiency Project or Multi-Value Project instead of a BRP if doing so "will resolve multiple transmission needs more efficiently and cost-effectively than individual [BRPs], as long as the Market Efficiency Project or Multi-Value Project can be implemented in time to meet the reliability needs that the [BRPs] were needed to address."¹² Additionally, MISO stated that, if a BRP also qualifies as a Market Efficiency Project or Multi-Value Project, it will be considered as such.¹³

⁷ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 28.

⁸ *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215, at PP 20, 28 (2013) (BRP Order), *order on reh'g*, 147 FERC ¶ 61,127 (2014) (BRP Rehearing Order).

⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 142 FERC ¶ 61,215 at P 486.

¹⁰ *Id.* P 487.

¹¹ *Id.*

¹² *Id.* P 488.

¹³ *Id.*

5. When the Commission accepted the revised BRP cost allocation method, it found, among other things, that MISO had provided “convincing support” that the transmission pricing zone in which a BRP is located receives most of the benefits provided by that project, and therefore assigning all costs to that pricing zone results in an allocation of costs that is roughly commensurate to the distribution of the project’s benefits.¹⁴ The Commission also found persuasive MISO’s contention that, going forward, Market Efficiency Projects and Multi-Value Projects will displace BRPs when more efficient or cost-effective regional solutions are available to meet multiple transmission needs. However, the Commission required MISO to submit a one-time informational filing detailing the number of Multi-Value Projects, Market Efficiency Projects, and BRPs approved during the MTEP 2014 and MTEP 2015 cycles and analyzing the BRPs approved during those cycles.¹⁵

6. In its 2016 and 2017 Informational Filings, MISO stated that 45 BRPs were approved in 2014 and 85 in 2015 and that, of these 130 projects, 105 projects would have had 100% of their costs allocated to their local pricing zone under the previous BRP cost allocation method.¹⁶ Further, of the 49 projects that would have qualified for cost sharing, 46 would have retained at least 75% or more of the project cost in their local pricing zones, and 45 of the 49 projects would have had more than 90% of the project’s costs allocated to the project’s local pricing zone under the old cost allocation method.¹⁷ MISO also stated that, in 2014 and 2015, zero and one Market Efficiency Projects were approved, respectively, and zero Multi-Value Projects were approved in either year. MISO asserted, however, that the “primary factor” explaining the low number of Multi-Value Projects and Market Efficiency Projects approved in these transmission planning cycles was the previous Multi-Value Project Portfolio in December 2011, pursuant to which 17 Multi-Value Project projects were approved and scheduled to be in-service

¹⁴ *Id.* P 521.

¹⁵ *Id.* P 519. In fact, MISO submitted two informational filings in compliance with BRP Order. Midcontinent Indep. Sys. Operator, Inc., Informational Filing, Docket Nos. ER13-186-000 & ER13-187-000 (filed Aug. 1, 2016) (2016 Informational Filing); Midcontinent Indep. Sys. Operator, Inc., Informational Filing, Docket Nos. ER13-186-000 & ER13-187-000 (filed Mar. 17, 2017) (2017 Informational Filing). MISO stated that it did so because the information in the 2017 Informational Filing was “more robust and transparent” and because it “identified minor calculation errors” in the 2016 Informational Filing. *Id.* at 1.

¹⁶ *Id.*

¹⁷ *Id.* at 2-3.

before the end of 2020.¹⁸ MISO stated that this approval left “primarily local reliability issues to be addressed.”¹⁹ Nonetheless, MISO argued that the results of its analysis demonstrated that BRPs continue to serve primarily local reliability purposes and provide local benefits.²⁰

II. Complaint

7. Complainants argue that MISO’s current practice of allocating all costs of all BRPs exclusively to the local pricing zone is not just and reasonable.²¹ Regarding the appropriate standard of review, Complainants state that the Commission may reexamine a previously accepted rate in a subsequent proceeding where a complainant demonstrates, pursuant to Federal Power Act (FPA) section 206,²² that the existing rate is unjust and unreasonable by presenting new evidence or evidence that circumstances have changed.²³ Complainants state that new evidence demonstrates that the BRP cost allocation method is unjust and unreasonable because it prohibits the allocation of any BRP costs outside of the local pricing zone regardless of the beneficiaries elsewhere.²⁴ Complainants state that allocating costs of transmission additions based exclusively on physical location fails to allocate costs in a manner that is roughly commensurate with BRP benefits.²⁵

8. According to Complainants, the U.S. Court of Appeals for the District of Columbia Circuit (D.C. Circuit) explained that “all approved rates [must] reflect to some degree the costs actually caused by the customer who must pay them,”²⁶ which it evaluates “by comparing the costs assessed against a party to the burdens imposed or benefits drawn by

¹⁸ 2016 Informational Filing at 2.

¹⁹ *Id.* at 3.

²⁰ *Id.*

²¹ Complaint at 23.

²² 16 U.S.C. § 824e (2018).

²³ Complaint at 23.

²⁴ *Id.* at 24.

²⁵ *Id.*

²⁶ *Id.* (citing *KN Energy Inc. v. FERC*, 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, 1320-21 (D.C. Cir. 2004)).

that party”²⁷ and that “[t]o the extent that a utility benefits from the costs of new facilities, it may be said to have “caused” a part of those costs to be incurred.”²⁸ Complainants also state that, in *South Carolina Public Service Authority v. FERC*, where the D.C. Circuit upheld Order No. 1000,²⁹ the D.C. Circuit stated that “the Commission’s adoption of a beneficiary-based cost allocation method is a logical extension of the cost causation principle”³⁰ pursuant to which “costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.”³¹

9. In support of the Complaint, Complainants include a report titled “LODF-Mile Cost Allocations for Selected Transmission Projects in MISO,” which was prepared for LS Power Midcontinent by Pterra Consulting (Pterra Report). The Pterra Report aimed to replicate MISO’s procedure for the LODF method and apply this analysis to determine beneficiaries for a set of transmission projects contained in MISO’s 2013-2018 MTEPs, including 29 BRPs and two Other Projects.³² According to Complainants, the Pterra Report shows that automatically allocating costs for BRPs only to the project’s local pricing zone is not roughly commensurate with benefits.³³ More specifically, Complainants state that the Pterra Report demonstrated that zones other than the BRP’s local pricing zone received more than *de minimis* benefits for 12 projects in a 29 project sample group.³⁴ Further, Complainants contend that the LODF method identified beneficiaries consistently and that,

²⁷ *Id.* (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004) (*Midwest ISO TOs v. FERC*); see also *Alcoa Inc. v. FERC*, 564 F.3d 1342, 1346-47 (D.C. Cir. 2009); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, at 4-5 (D.C. Cir. 2002); 16 U.S.C. § 824d (2018)).

²⁸ *Id.* (citing *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 476 (7th Cir. 2009)).

²⁹ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011) (Order No. 1000), *order on reh’g*, Order No. 1000-A, 139 FERC ¶ 61,132 (Order No. 1000-A), *order on reh’g and clarification*, Order No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff’d sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

³⁰ Complaint at 25 (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 85).

³¹ *Id.* (citing *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d at 85).

³² *Id.* at 25 n.17; Pterra Report at 6.

³³ Complaint at 29.

³⁴ *Id.* at 25-26.

to the extent that benefits are more localized, the LODF method recognizes, and accounts for, that scenario.³⁵

10. Complainants also allege that the 2016 and 2017 Informational Filings disproved MISO's prediction that Multi-Value Project and Market Efficiency Project development will displace BRPs, and argue that this prediction was a "key factor" in the Commission's decision in the BRP Order.³⁶ For this reason, Complainants argue that the Commission should reconsider the justness and reasonableness of the current BRP cost allocation method and question whether the Commission has, in effect, "exempted an entire type of transmission facility from regional cost sharing" in violation of Order No. 1000.³⁷

11. Complainants argue that recent appellate and Commission precedent clarify that generic cost allocation rules must result in just and reasonable cost allocation on a project-by-project basis to meet the requirement that costs assigned and benefits received are roughly commensurate.³⁸ For example, Complainants note that, in the Artificial Island Decision, the Commission reversed its approval of a cost allocation methodology in PJM for which costs would not be allocated in a manner at least roughly commensurate with the benefits received by zonal ratepayers.³⁹ In addition, according to Complainants, in *ODEC v. FERC*, the D.C. Circuit vacated the Commission's approval of a PJM cost allocation method that relied on project location to allocate costs. According to Complainants, the D.C. Circuit found the Commission's decision inconsistent with the cost causation principle because the cost allocation method "denies cost sharing for all projects included in the Regional Plan only to satisfy the planning criteria of individual utilities," including the two percent known to have regional benefits.⁴⁰ Complainants note that the D.C. Circuit stated that the cost causation principle "prevents regionally beneficial projects from being arbitrarily excluded from cost sharing—a necessary corollary to ensuring that the costs of such projects are allocated commensurate with their benefits"

³⁵ *Id.* at 30.

³⁶ *Id.* at 30-31 (citing MISO 2017 Informational Filing).

³⁷ *Id.* at 32 & n76.

³⁸ *Id.* at 36 (citing *Delaware Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 166 FERC ¶ 61,161 (2019) (Artificial Island Decision); *Old Dominion Electric Cooperative v. FERC*, 898 F.3d 1254 (D.C. Cir. 2018) (*ODEC v. FERC*); *El Paso Elec. Co. v. FERC*, 832 F.3d 495, 505 (5th Cir. 2016)).

³⁹ Complaint at 35-36 (citing Artificial Island Decision, 166 FERC ¶ 61,161 at P 40).

⁴⁰ *Id.* (citing *ODEC v. FERC*, 898 F.3d at 1261).

and concluded that “to ensure just and reasonable rates, FERC must make some reasonable effort to match costs to benefits.”⁴¹ Further, Complainants argue that the D.C. Circuit stated that the reasonable effort requirement means that the Commission “may not single out a party for the full cost of a project, or even most of it, when the benefits of the project are diffuse.”⁴² Complainants contend that the Pterra Report and the 2016 and 2017 Informational Filings demonstrate that some BRPs provide significant benefits to zones other than the BRP’s local pricing zone and that this evidence, combined with the precedent that Complainants cite, indicate that the current BRP cost allocation method violates the cost causation principle and is, therefore, unjust and unreasonable.⁴³

12. Complainants note that, since *ODEC v. FERC*, the Commission has considered that decision’s implications to find a MISO cost allocation method for a new category of economically beneficial projects with voltages between 100 kV and 345 kV (termed Local Economic Projects) inconsistent with the cost-causation principle because it would ignore the results of a benefits analysis to allocate the costs to a single pricing zone.⁴⁴

13. Complainants ask the Commission to require that MISO determine BRP beneficiaries using an analytical method that actually analyzes the transmission pricing zones that benefit from BRPs⁴⁵ and argue that the Commission could find, pursuant to FPA section 206, that the LODF method would be a just and reasonable replacement BRP cost allocation method.⁴⁶

14. Complainants also argue that the Commission should not defer to MISO or its stakeholders to determine a replacement cost allocation method because FPA section 206 requires that the Commission determine the just and reasonable rate, and cost allocation issues are uniquely unsuited to resolution by stakeholders.⁴⁷ Complainants also argue that using the LODF method would expand the number of projects eligible for competition consistent with Order No. 1000, which required transmission providers to

⁴¹ *Id.* at 37 (citing *ODEC v. FERC*, 898 F.3d at 1263).

⁴² *Id.* (citing *ODEC v. FERC*, 898 F.3d at 1255).

⁴³ *Id.* at 37-38.

⁴⁴ *Id.* at 39 (citing *Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,258, at P 63 (2019) (2019 Regional Cost Allocation Order)).

⁴⁵ *Id.* at 40.

⁴⁶ *Id.* at 41.

⁴⁷ *Id.* at 42.

remove federal rights of first refusal for projects selected in the regional transmission plan for purposes of cost allocation.⁴⁸ Complainants allege that, by limiting BRP cost allocation to only the local pricing zone, MISO not only fails to accurately allocate costs; it also intentionally denies consumers the benefits of transmission development competition, such as cost savings.⁴⁹ Further, Complainants argue that competitive solicitations for BRPs will not overly burden MISO because BRPs will be not eligible for competition in instances where the beneficiary analysis shows that only the local pricing zone will benefit.⁵⁰

III. Notice and Responsive Pleadings

15. Notice of the Complaint was published in the *Federal Register*, 85 Fed. Reg. 4969 (Jan. 28, 2020), with answers, interventions, and comments due on or before February 10, 2020.

16. On January 29, 2020, MISO filed a motion to extend the comment date to March 26, 2020 (First Extension Motion). On January 31, 2020 and February 3, 2020, MISO South Regulators⁵¹ and MISO Transmission Owners (MISO TOs),⁵² respectively,

⁴⁸ *Id.* at 43.

⁴⁹ *Id.* at 43-45.

⁵⁰ *Id.* at 45.

⁵¹ MISO South Regulators consist of the Arkansas Public Service Commission (Arkansas Commission), the Louisiana Public Service Commission (Louisiana Commission), the Council of the City of New Orleans (New Orleans Council), the Mississippi Public Service Commission and Mississippi Public Utilities Staff (Mississippi Commission).

⁵² MISO TOs for this filing consist of: Ameren Services Company, as agent for Ameren Missouri, Ameren Illinois and Ameren Transmission Company of Illinois; American Transmission Company LLC; Big Rivers Electric Corporation; Central Minnesota Municipal Power Agency; City Water, Light & Power (Springfield, IL); Cleco Power LLC; Cooperative Energy; Duke Energy Business Services, LLC for Duke Energy Indiana, LLC; East Texas Electric Cooperative; Entergy Arkansas, LLC; Entergy Louisiana, LLC; Entergy Mississippi, LLC; Entergy New Orleans, LLC; Entergy Texas, Inc.; Great River Energy; Hoosier Energy Rural Electric Cooperative, Inc.; Indiana Municipal Power Agency; Indianapolis Power & Light Company; ITC Transmission; ITC Midwest LLC; Lafayette Utilities System; Michigan Electric Transmission Company, LLC; MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P); Montana Dakota Utilities Co.; Northern Indiana Public Service Company LLC; Northern States Power Company, a Minnesota corporation, and Northern

filed comments in support of the First Extension Motion. On February 4, 2020, the Organization of MISO States (OMS) filed a notice of intervention and comments in support of the First Extension Motion. On February 4, 2020, Complainants filed comments opposing the First Extension Motion. On February 5, 2020, the Office of the Secretary issued a notice extending the answer deadline to March 26, 2020.⁵³

17. On March 23, 2020, MISO and MISO TOs filed a motion requesting an extension of time to comment to April 27, 2020 (Second Extension Motion). On March 24, 2020, MISO South Regulators filed comments in support of the Second Extension Motion. On March 25, 2020, the Office of the Secretary issued a notice extending the answer and comment deadline to May 1, 2020.

18. New Orleans Council, Louisiana Commission, Mississippi Commission, Public Utility Commission of Texas, Illinois Commerce Commission, Arkansas Commission, Michigan Public Service Commission, Public Service Commission of Wisconsin, Indiana Utility Regulatory Commission, Missouri Public Service Commission, Iowa Office of the Consumer Advocate, Indiana Office of Utility Consumer Counselor, and People of the State of Illinois filed notices of intervention.

19. DTE Electric Company, MISO TOs, Cooperative Energy, Entergy Services, LLC, GridLiance Heartland LLC (GridLiance), American Municipal Power, Inc., East Texas Electric Cooperative, Inc., Alliant Energy Corporate Services, Inc., Dominion Energy Services, Inc, Ameren Service Company, WEC Energy Group, Inc., Louisiana Energy Users Group, Association of Businesses Advocating Tariff Equity, Illinois Industrial Energy Consumers, Exelon Corporation, Michigan Public Power Agency, Avangrid Networks, Inc., Michigan South Central Power Agency, American Wind Energy Association, Texas Industrial Energy Consumers, Transource Energy, LLC, American Electric Power Service, Public Service Electric and Gas Company, PPL Electric Utilities Corporation, and Midwest TDUs⁵⁴ filed timely motions to intervene.

States Power Company, a Wisconsin corporation, subsidiaries of Xcel Energy Inc.; Northwestern Wisconsin Electric Company; Otter Tail Power Company; Prairie Power Inc.; Southern Illinois Power Cooperative; Southern Indiana Gas & Electric Company; Southern Minnesota Municipal Power Agency; Wabash Valley Power Association, Inc.; and Wolverine Power Supply Cooperative, Inc. MISO TOs Feb. 13, 2020 Motion Revision at 1-2.

⁵³ FERC, Mar. 26, 2020 Notice Granting Extension of Time.

⁵⁴ Midwest TDUs consist of Madison Gas and Electric Company, Joint Municipal Electric Utility Commission, and WPPI Energy.

20. On March 26, 2020, OMS filed a motion to dismiss the Complaint and comments. On April 10, 2020, Complainants filed a response to OMS's motion. On April 29, 2020, MISO South Regulators filed a protest of the Complaint.⁵⁵ On May 1, 2020, MISO TOs and ITC Companies⁵⁶ filed protests of the Complaint. On May 1, 2020, Securing America's Future Energy and GridLiance filed comments.

21. MISO filed an answer to the Complaint on May 1, 2020. On May 1, 2020, Joint Consumer Advocates⁵⁷ and Missouri River Energy Services (Missouri River) filed timely motions to intervene and comments. On May 15, 2020, MISO South Regulators filed an answer.⁵⁸ On June 8, 2020, Complainants filed an answer.

A. MISO Answer

22. According to MISO, the Pterra Report uses a highly selective sample of BRPs approved in the MTEP 2014 through MTEP 2019 transmission planning cycles and, even if taken at face value, does not demonstrate "new or changed circumstances" necessary to show that the Complaint does not qualify as a collateral attack on prior Commission decisions.⁵⁹ Specifically, MISO argues that the Complaint relies upon a "small, selective sample" of 31 projects from six MTEP transmission planning cycles, when the total number of BRPs approved during that period exceeds 400.⁶⁰ MISO also argues that the Pterra Report contains multiple errors that render the analysis of seven of these projects

⁵⁵ New Orleans Council did not participate in this protest.

⁵⁶ ITC Companies consist of those ITC MISO Operating Companies that intervened with MISO TOs: ITC *Transmission*, Michigan Electric Transmission Company, LLC, and ITC Midwest LLC.

⁵⁷ The Joint Consumer Advocates consist of the Iowa Office of Consumer Advocate, Indiana Office of Utility Consumer Counselor, and the Citizens Utility Board of Wisconsin.

⁵⁸ New Orleans Council did not participate in this answer.

⁵⁹ MISO Answer at 18-19, 22 (quoting *Alamito Co.*, 41 FERC ¶ 61,312, at 61,829 (1987)); see also MISO South Regulators Protest at n.78 (citing *American Electric Power Service Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, P 70 (2008)). MISO also states that Commission's policy discouraging collateral attacks is broad and is "not constrained by the limits of the doctrine of collateral estoppel." MISO Answer at 19 (quoting *Pac. Gas & Elec. Co.*, 121 FERC ¶ 61,065, at P 40 (2007)).

⁶⁰ *Id.* at 23.

incorrect.⁶¹ Additionally, MISO argues that the LODF method used in the Pterra Reports measures impacts, rather than benefits, which renders the report “meaningless.”⁶² Nonetheless, MISO asserts that, despite these defects, the Pterra Report still supports the Commission’s BRP Order analysis and, given the sample size, does not provide new circumstances or evidence necessary to revisit the conclusions of the BRP Order.⁶³

23. Further, MISO argues that contrary to Complainants’ assertion, the 2016 and 2017 Informational Filings confirmed the assumptions that the Commission relied upon in the BRP Order,⁶⁴ namely that “the benefits of a [BRP] are realized primarily in the [transmission] pricing zone in which the project is located.”⁶⁵

24. MISO notes that its experience since the LODF method was originally proposed as a cost allocation method demonstrates that, while the approach can be an indicator of impacts, in the vast majority of cases it does not provide results that deviate significantly from assigning BRP costs to the local zone. MISO also asserts that in some cases, the LODF method yields results inconsistent with clear reliability benefits. According to Jeffrey Webb, whose testimony is attached to MISO’s answer, the “overwhelming majority of BRPs” address a specific violation of NERC Transmission Planning Standards on a specific transmission facility or set of facilities owned by the same transmission owner and that BRPs are designed and implemented specifically to address these risks through compliance with the applicable reliability standards.⁶⁶

25. MISO provides examples to demonstrate that, in some cases, use of the LODF method could result in a zone being inappropriately allocated a portion of a BRP’s costs simply because there are impacts to its system even though the BRP does not address any identified reliability violation on that zone’s system or provide the zone with any measurable economic benefit.⁶⁷ For example, the Webb Testimony points to MTEP18 project P9716, which, according to Complainants, would have had 43% of its costs misallocated. The Webb Testimony argues that this project addresses a reliability violation

⁶¹ Webb Test. at 24-26.

⁶² MISO Answer at 23.

⁶³ *Id.*

⁶⁴ *Id.* at 3.

⁶⁵ BRP Order, 142 FERC ¶ 61,215 at P 520.

⁶⁶ Webb Test. at 8-9.

⁶⁷ *Id.* at 23.

on Cleco Power's system and that the solution was implemented in Cleco Power's footprint "thereby ensuring reliability and avoiding penalties or regulatory action."⁶⁸ The Webb Testimony states that the LODF results would have allocated the aforementioned 43% of costs to transmission owners even though the facility would neither address any reliability issues on their systems, nor provide any economic benefits.⁶⁹ According to the Webb Testimony, the situation presented by this example would recur in every case where a zone is allocated BRP costs not needed to fix a reliability problem in that zone.⁷⁰

26. MISO also argues that Complainants have not demonstrated that the LODF method, which MISO contends is a method for determining impacts on surrounding transmission facilities due to outage on a specific facility and does not identify benefits, is just and reasonable.⁷¹ Further, MISO states that, because BRPs solve local transmission issues and impact local customers, they are typically applied in close proximity to the issue of concern. In contrast, MISO argues that LODF-based methods, which can measure BRPs for the extent of impact on the electrical flow on networked facilities or networks adjacent to the BRP, do not establish or measure benefits to those adjacent zones.⁷² That is, application of the LODF method will only indicate whether a flow change has occurred but does not indicate whether the flow change was beneficial, detrimental, or neutral.⁷³ Additionally, MISO states that if a flow change relieves a constraint, enables access to different types or lower cost generation resources, or addresses a reliability violation in a neighboring region, it will potentially produce economic or public policy benefits in that pricing zone, in which case, the Tariff will capture the benefit through its Market Efficiency Project or Multi-Value Project categories.⁷⁴

27. Further, MISO alleges that the Pterra Report contains material errors that undermine the reliability of the report and highlight flaws in method and conclusions.⁷⁵

⁶⁸ *Id.* at 22.

⁶⁹ *Id.*

⁷⁰ Webb. Test. at 23.

⁷¹ *Id.* at 36-38.

⁷² MISO Answer at 37.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ Webb Test. at 26-27.

Specifically, the Webb Testimony states that MISO never categorized four of the projects analyzed in the Pterra Report as approved BRPs, meaning that they were never recommended for approval or were not driven by criteria applicable to a BRP. In addition, the Webb Testimony contends that, for five of the BRPs analyzed, the Pterra Report did not properly treat the Entergy Operating Companies as a single pricing zone, while two projects were analyzed based on an incorrect pricing zone location. For instance, regarding an example where the Complaint alleged that MISO misallocated 98% of the BRP's costs,⁷⁶ the Webb Testimony argues that Complainants erroneously stated that the project was in the Xcel zone and that 69% of benefits went to the Great River Energy zone. The Webb Testimony states that, in fact, the project is in the Great River Energy zone and thus, Great River Energy, which would be responsible for all of the costs received the largest share of benefits, even according to Complainants' analysis.⁷⁷ Regarding a sample project that the Complaint alleged had its costs entirely misallocated, the Webb Testimony states that, consistent with MISO's Order No. 1000 compliance order which considers all the Entergy Operating Companies to be part of a single transmission pricing zone, the project has 95% of LODF impacts to the zone where the project is located.⁷⁸

28. Additionally, MISO argues that Complainants' assertions about the failure of Market Efficiency Projects and Multi-Value Projects to lower the number of BRPs ignore significant intervening factors that occurred between 2013 and 2019. According to MISO, these factors include the integration of MISO South, which "almost exclusively" created the increased need for BRPs.⁷⁹ Moreover, MISO states that, since 2013, BRP development has declined in MISO North and South in terms of project numbers and costs.⁸⁰ MISO also disagrees with Complainants that BRP displacement has not occurred and argues that Market Efficiency Project development occurred in 2015, 2016, and 2017 and that current MISO proposals to expand benefit metrics and expand Market Efficiency Project voltage eligibility will increase Market Efficiency Project development

⁷⁶ According to Complainants, Xcel was allocated 100% of the cost of this \$48,916,000 project under MISO's current BRP cost allocation, when the Pterra Report determined that Xcel only received \$885,092 in benefits (1.81%) based on the LODF method. Complaint at 27.

⁷⁷ Webb Test. at 26.

⁷⁸ *Id.*; see also MISO TOs Protest at 43-44.

⁷⁹ MISO Answer at 24.

⁸⁰ *Id.* at 25.

opportunities.⁸¹ MISO states that it is experiencing a “rapid resource portfolio evaluation” due to higher concentrations of renewables, which can reasonably be expected to create more opportunities for identifying regionally beneficial Market Efficiency Projects.⁸²

29. Furthermore, MISO contends that the “roughly commensurate” requirement does not mean that every potential beneficiary must pay every potential cost associated with every possible benefit.⁸³ It also argues that the court and Commission decisions cited by the Complainants do not “stand for the radical re-calibration of the cost causation standard.”⁸⁴ To this point, MISO states that nothing in *ODEC v. FERC* suggests that the Commission must precisely allocate project costs to each alleged project beneficiary but, rather, that this decision involves project categories, such as high- and low-voltage facilities, rather than individual projects.⁸⁵ It argues that the D.C. Circuit merely concluded that the Commission “failed to allocate the costs properly for the entire high-voltage category included in the PJM amendment.”⁸⁶ Additionally, MISO argues that the current case bears no resemblance to the Artificial Island Decision, as Complainants do not contend that there is a subcategory of network upgrades within the BRP category that requires a different cost allocation method due to its unique characteristics.⁸⁷ Additionally, MISO distinguishes the 2019 Regional Cost Allocation Order and the subsequent attempts to fix the underlying proposal,⁸⁸ arguing that, unlike the Local Economic Projects at issue in those orders, BRPs are not required to meet any regional

⁸¹ *Id.* at 24-25.

⁸² *Id.* at 26.

⁸³ *Id.* at 27.

⁸⁴ *Id.* at 28.

⁸⁵ *Id.* at 30.

⁸⁶ *Id.*

⁸⁷ *Id.* at 32.

⁸⁸ The Commission rejected MISO’s modified proposal on March 20, 2020. *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,241 (2020) (March 2020 Regional Order). MISO modified its proposal, which it filed in Docket Nos. ER20-1723-000 and ER20-1724-000. The Commission accepts that proposal in an order issued concurrently with this order. *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,095 (2020).

benefits tests or utilize any regional metrics and that, consistent with their purpose, “ensuring compliance with reliability requirements,” BRP costs are allocated locally.⁸⁹

30. Further, MISO argues that the “essential linkage” between a BRP’s location and its reliability benefits is confirmed by data, including MISO’s analysis of BRPs approved in MTEP 2018 and MTEP 2019, which demonstrated that virtually all BRPs approved in those transmission planning cycles had their costs allocated to the transmission pricing zones where the underlying reliability violations were identified.⁹⁰

B. OMS Motion to Dismiss and Complainants Response

31. OMS asks the Commission to dismiss the Complaint without prejudice because Complainants’ requested Tariff changes have not been subjected to the MISO stakeholder process.⁹¹ OMS notes that MISO recently submitted revisions to its regional and interregional⁹² Market Efficiency Project cost allocation methods, which took years to develop and were the result of extensive discussion and compromise. OMS asserts that LSP Power Holdings II, LLC and its subsidiaries sought to cut a similar stakeholder process short through a June 5, 2019 Complaint in Docket No. EL19-79-000 (2019 Complaint), which involved the Market Efficiency Project cost allocation method. OMS states that, in that proceeding, it asked the Commission to let the stakeholder process conclude before reaching a decision.⁹³ OMS further asserts that, because the Commission

⁸⁹ MISO Answer at 33.

⁹⁰ *Id.* at 34, 36-38.

⁹¹ OMS Comments at 1-2 (citing Complaint at 1-2).

⁹² *Id.* at 3 (citing Midcontinent Indep. Sys. Operator, Inc. Tariff Revisions, Docket No. ER20-857-000 (filed Jan. 21, 2020); Midcontinent Indep. Sys. Operator, Inc. Tariff Revisions, Docket No. ER20-862-000 (filed Jan. 22, 2020)). The Commission rejected these filings on March 20, 2020. March 2020 Regional Order, 170 FERC ¶ 61,241; *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,242 (2020).

⁹³ LSP Power Transmission Holdings II, LLC, Cardinal Point Electric, LLC, and LS Power Midcontinent, LLC v. Midcontinent Indep. Sys. Operator, Inc., Organization of MISO States, Inc., Motion to Hold Complaint in Abeyance,, Docket No. EL19-79-000 (filed July 24, 2019).

has not acted on the 2019 Complaint, it has allowed the MISO stakeholder process to conclude.⁹⁴

32. OMS contends that there is a similar ongoing stakeholder process regarding BRPs and that stakeholders should have the opportunity to study these issues prior to the Commission deciding on this Complaint.⁹⁵ OMS argues that, prior to the Commission changing an existing method that the Commission previously found to be just and reasonable, MISO stakeholders, and in particular the state regulatory authorities, should have the opportunity to consider all stakeholder views on the existing BRP cost allocation method's purported shortcomings.⁹⁶ Further, OMS adds that the Commission has already determined that MISO's current BRP cost allocation method is just and reasonable, and that ruling should not be disturbed at this time.⁹⁷

33. In response, Complainants contend that OMS's motion to dismiss is factually misplaced, legally unsupported, and proposes a poor policy outcome.⁹⁸ They note that OMS does not argue that the existing BRP cost allocation method is just and reasonable. Complainants also argue that relevant legal precedent indicates that a location-based cost allocation method that does not reflect identifiable regional beneficiaries is legally deficient because it is inconsistent with the cost causation principle.⁹⁹

34. Furthermore, Complainants argue that they are under no obligation to seek a stakeholder process resolution before filing a complaint.¹⁰⁰ Complainants also state that, while the Commission encourages parties to seek to resolve a dispute before filing a complaint, the Commission recognized that its preference does not bar a party from exercising its FPA section 206 rights.¹⁰¹ Complainants add that awaiting possible

⁹⁴ We note that the Commission is issuing an order on the 2019 Complaint concurrently with this order. *LSP Power Transmission Holdings II, LLC v. Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,098 (2020).

⁹⁵ OMS Comment at 3.

⁹⁶ *Id.* at 4.

⁹⁷ *Id.* (citing BRP Order, 142 FERC ¶ 61,215 at PP 484, 518 and 520).

⁹⁸ Complainants Answer at 10.

⁹⁹ Complainants Answer at 2 (citing *ODEC. v. FERC*, 898 F.3d at 1262-1263).

¹⁰⁰ *Id.* at 3 (citing *EDF Renewable Energy, Inc. v. Midcontinent Independent System Operator, Inc.*, 163 FERC ¶ 61,003, at P 46 (2018) (*EDF Renewable Energy*)).

¹⁰¹ *Id.* (citing *EDF Renewable Energy*, 163 FERC ¶ 61,003 at P 46).

resolution through a stakeholder process would leave ratepayers subject to unjust and unreasonable rates.¹⁰²

35. According to Complainants, while OMS seeks a stakeholder process related to cost allocation, the motion to dismiss does not recognize the fact that, unlike the BRP LODF cost allocation, which was in place before 2013, the challenged BRP cost allocation method was not subject to a stakeholder process but was presented by incumbent MISO transmission owners, with MISO concurrence.¹⁰³

36. Furthermore, Complainants argue that OMS offers no information on how a stakeholder process would proactively, efficiently, or promptly address the current unjust and unreasonable BRP cost allocation method. Complainants further argue that, because of MISO's size and divergent stakeholder interests, the MISO stakeholder process is not always an efficient avenue for developing a just and reasonable alternative cost allocation method.¹⁰⁴

C. Other Pleadings

1. General Comments

37. Joint Consumer Advocates, GridLiance, Missouri River, and Securing America's Future Energy support the Complaint.¹⁰⁵ GridLiance believes that, if the Commission does not direct MISO to change its current BRP cost allocation method, the Commission should order a comprehensive technical conference to address issues raised in the Complaint in more depth.¹⁰⁶

38. MISO South Regulators, MISO TOs, ITC Companies, and OMS oppose the Complaint and argue that MISO's current BRP cost allocation remains just and

¹⁰² *Id.* at 4.

¹⁰³ *Id.* at 8 (citing *See Midwest Indep. Sys. Operator, Inc., Transmittal*, filed in Docket No. ER06-18-000 at 2-8 (filed Oct. 7, 2005)).

¹⁰⁴ Complainants Answer at 9 (citing 2019 Regional Cost Allocation Order, 167 FERC 61,258 and March 2020 Regional Order, 170 FERC ¶ 61,241).

¹⁰⁵ Joint Consumer Advocates Comments at 1-2; GridLiance Comments at 1-2; Missouri River Comments at 3-4; Securing America's Future Energy Comments at 3.

¹⁰⁶ GridLiance Comments at 8.

reasonable.¹⁰⁷ Since, according to MISO South Regulators, Complainants have not met the evidentiary burden justifying changed circumstances, MISO South Regulators oppose the Commission requiring a technical conference or formal stakeholder proceedings to revise the current cost allocation method.¹⁰⁸

2. FPA Section 206 Requirements

39. MISO South Regulators note that, pursuant to FPA section 206, Complainants would have to rely on new evidence or provide evidence that circumstances have changed.¹⁰⁹ MISO South Regulators assert that, even if Complainants meet this burden, the Commission may only impose a new rate scheme on a Regional Transmission Organization (RTO) under FPA section 206 if it first finds that existing rates are “entirely outside the zone of reasonableness”¹¹⁰ and that Complainants have produced no credible evidence to surmount these requirements.¹¹¹ MISO South Regulators assert that the Commission considered virtually identical assertions related to competition and cost causation and ultimately rejected them in the BRP Order.¹¹²

3. BRP Purpose and Benefits

40. Regarding the purpose of BRPs, ITC Companies assert that MISO’s BRP process allows incumbent transmission owners to respond to reliability needs in a timely manner, ensure compliance with NERC standards, and reduce outages.¹¹³ MISO South Regulators contend that any efficiency, cost-effectiveness, or regional reliability benefits that a BRP may produce are incidental to the project’s purpose, as BRPs are designed to ensure

¹⁰⁷ MISO South Regulators Answer at 2; MISO TOs Protest at 45-46; ITC Companies Protest at 1-2.

¹⁰⁸ MISO South Regulators Answer at 8-9.

¹⁰⁹ *Id.* at 21 (citing *American Elec. Power Serv. Corp. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,083, at P 70 (2008)).

¹¹⁰ *Id.* (citing *NRG Power Mktg, LLC v. FERC*, 862 F.3d 108, 114 n.2 (D.C. Cir. 2017)).

¹¹¹ *Id.* (citing BRP Order, 142 FERC ¶ 61,215 at P 504).

¹¹² *Id.* at 21-22 (citing BRP Order, 142 FERC ¶ 61,215 at P 521).

¹¹³ ITC Companies Protest at 4.

compliance with NERC reliability criteria and local reliability requirements.¹¹⁴ MISO South Regulators assert that, more importantly, BRPs are built to ensure adequate baseline reliability for local customers in the local pricing zone.¹¹⁵ Similarly, MISO TOs assert that the Tariff definitions of BRP and “Transmission System” clarify that BRPs address specifically identified local issues and that the only true BRP beneficiaries are the Transmission Owner whose system would otherwise violate reliability standards and the customers served by that system.¹¹⁶ For these reasons, MISO South Regulators argue that it was appropriate for the Commission to approve the local cost allocation for BRPs as “roughly commensurate” with local reliability benefits.¹¹⁷ Furthermore, MISO South Regulators argue that it is appropriate for the Market Efficiency Project and Multi-Value Project cost allocation methods to be fundamentally different from BRPs, because the primary purposes of Market Efficiency Projects and Multi-Value Projects are to provide economic and efficiency benefits or public policy benefits at a regional level, respectively. Moreover, according to MISO South Regulators, where BRPs provide substantial economic benefits to regional customers, on a scale comparable to Market Efficiency Projects and Multi-Value Projects, the MISO Tariff provides for the project to be classified accordingly and to be subject to regional cost allocation.¹¹⁸

41. MISO South Regulators further assert that Complainants provide no evidence of misallocated regional benefits and that the Pterra Report fails to identify any extra-zonal benefits to zonally allocated BRPs.¹¹⁹

42. MISO TOs argue that the 2016 and 2017 Informational Filings provide further support that the current BRP cost allocation method is just and reasonable and consistent with cost causation and that Complainants have not met their FPA section 206 burden.¹²⁰ MISO TOs argue that the Tariff essentially requires that MISO confirm that each BRP does not generate regional benefits on a project-by-project basis, or MISO would classify them as Market Efficiency Projects or Multi-Value Projects. In other words, MISO TOs

¹¹⁴ MISO South Regulators Answer at 3; MISO South Regulators Protest at 13.

¹¹⁵ *Id.* at 13-14.

¹¹⁶ *Id.* at 17-19.

¹¹⁷ *Id.* at 14 (citing BRP Order, 142 FERC ¶ 61,215 at P 520).

¹¹⁸ MISO South Regulators Protest at 14 (citing MISO Tariff, Attach. FF, § III.A.2.j).

¹¹⁹ MISO South Regulators Answer at 3-4.

¹²⁰ MISO TOs Protest at 16-17.

contend that a project would only be approved as a BRP when MISO identifies no significant associated regional benefits.¹²¹

43. MISO South Regulators assert that the only benefits relevant to Market Efficiency Project cost allocation are the economic benefits approved by the Commission and contained in the MISO Tariff, which the Complaint fails to identify. Moreover, MISO South Regulators also assert that Complainants do not identify regional reliability benefits; they simply presume that such benefits exist. MISO South Regulators argue that the Complainants' failure to identify any real benefit measured through the LODF method runs afoul of Commission and judicial precedent. MISO South Regulators explain that (1) the Commission requires that benefits must be real (not alleged) to allocate costs;¹²² and (2) even where the Commission presumes that a transmission project may offer some general benefit to the system, the presumption cannot be relied upon to "avoid the duty of 'comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.'"¹²³ MISO South Regulators argue that the Complainants' failure to identify a measurable regional benefit—economic or reliability—makes a comparison against cost assessment to the local pricing zone impossible.

4. LODF and the Pterra Report

44. MISO TOs argue that the Pterra Report includes numerous errors and lacks sufficient robustness because it only examines 31 BRPs when MISO approved hundreds of BRPs during the relevant period. For this reason, MISO TOs contend that, without more information regarding the reasons for examining the 31 subject BRPs, the Pterra Report deserves no weight.¹²⁴ Moreover, MISO TOs contend that certain examined projects are not, in fact, BRPs or MISO Board-approved projects, a fact that further undercuts the Pterra Report's value.¹²⁵ Even so, MISO TOs argue that the Pterra Report

¹²¹ *Id.* at 19.

¹²² MISO South Regulators Protest at 17 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d at 476).

¹²³ *Id.* at 17-18 (citing *Ill. Commerce Comm'n v. FERC*, 576 F.3d at 477).

¹²⁴ MISO TOs Protest at 42.

¹²⁵ *Id.* at 42-43.

does not support the Complaint by demonstrating that the current BRP cost allocation method is unjust and unreasonable.¹²⁶

45. In contrast, GridLiance notes that the Pterra Report demonstrates that at least one-third of MISO's BRPs reviewed provide significant extra-zonal benefits.¹²⁷ Similarly, Securing America's Future Energy argues that the reliability benefits of BRPs are not restricted to a narrow, confined, local zone and that the current BRP cost allocation method ignores the fact that benefits are accruing to beneficiaries beyond those zones.¹²⁸

46. MISO South Regulators and MISO TOs contend that Complainants' proposal is unjust and unreasonable because the LODF method does not measure ratepayer economic benefits or reliability; it is simply a linearized measure of how the flows on other lines in the system change when a new transmission project is installed.¹²⁹ MISO South Regulators also argue that the Complaint does not explain how a change in flows results in a benefit to any ratepayer or link the change in flow measured using the LODF method to adjusted production cost savings.¹³⁰ MISO TOs further explain that impacts uncovered through the LODF method may actually indicate a detrimental impact from increased or decreased flows resulting from a studied project and thus the LODF method does not ensure that costs are allocated in a manner roughly commensurate with benefits.¹³¹ MISO TOs argue that simply because a project selected by the Pterra Report shows impacts to facilities owned by transmission owners other than the transmission owner that built the BRP does not mean that the BRP benefits those other transmission owners and their customers. Further, MISO TOs argue that it is irrelevant that MISO previously

¹²⁶ *Id.* at 41.

¹²⁷ GridLiance Comments at 5-6; *see also* Securing America's Future Energy Comments at 5.

¹²⁸ Securing America's Future Energy Comments at 3 & 6.

¹²⁹ MISO South Regulators Protest at 16 (citing PowerWorld Corp., *Line Outage Distribution Factors (LODFs)*, https://www.powerworld.com/WebHelp/Content/MainDocumentation_HTML/Line_Outage_Distribution_Factors_LODFs.htm); MISO TOs Protest at 9.

¹³⁰ MISO South Regulators Protest at 16.

¹³¹ MISO TOs Protest at 9-10, 45-46.

allocated some BRP costs based on the LODF method because the current method better aligns with cost causation principles.¹³²

5. ODEC v. FERC and Commission Precedent

47. MISO TOs contend that, according to the D.C. Circuit, the cost causation principle only requires rates to “reflect to some degree the costs actually caused by the customer who must pay them,” and that “nothing requires the Commission to ensure full or perfect cost causation.”¹³³ MISO TOs also state, citing Order No. 1000, “the cost causation principle and roughly commensurate standard do not require the Commission to track down every conceivable potential beneficiary and allocate them a portion of the costs of projects that another party claims benefits them.”¹³⁴ MISO TOs argue that if a complainant need only show that a cost allocation method does not precisely allocate costs to all potential beneficiaries of a project in the category, there may be a proliferation of cost allocation complaints each time a customer is dissatisfied with the approval of a project.¹³⁵

48. Several entities that oppose the Complaint argue that Order No. 1000 supports their positions. MISO South Regulators explain that Order No. 1000 mandates that every market participant that receives a cost allocation must receive benefits that are roughly commensurate with its allocated costs, not that all market participant beneficiaries must be allocated costs.¹³⁶ Order No. 1000 also, according to MISO TOs, does not prohibit a public utility transmission provider from meeting “its reliability needs or service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not submitted for regional cost allocation.”¹³⁷ MISO TOs point out that, in the BRP Order and in the subsequent BRP Rehearing Order, the Commission concluded that BRPs are the type of local transmission projects contemplated by Order Nos. 1000 and 1000-A (that is, facilities that

¹³² *Id.* at 10.

¹³³ *Id.* at 8.

¹³⁴ *Id.* n.18 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 660).

¹³⁵ *Id.* at 32.

¹³⁶ MISO South Regulators Protest at 7 (citing Order No. 1000, 136 FERC ¶ 61,051 at PP 10, 586, 622-629, 639; Order No. 1000-A, 139 FERC ¶ 61,132 at P 580; *Ill. Commerce Comm’n v. FERC*, 576 F.3d at 477); *see also* MISO TOs Protest at 6-8.

¹³⁷ MISO TOs Protest at 25-27; MISO South Regulators Protest at 12 (citing Order No. 1000-A, 139 FERC ¶ 61,132 at P 425).

are not selected in the regional transmission plan for purposes of cost allocation) and that the U.S. Court of Appeals for the Seventh Circuit (Seventh Circuit) fully affirmed the Commission's findings.¹³⁸

49. Multiple entities disagree as to whether *ODEC v. FERC* supports the Complaint. MISO South Regulators, for example, argue that Complainants' reliance upon *ODEC v. FERC* is misplaced¹³⁹ because *ODEC v. FERC* did not hold that zonal allocation violates the cost causation principle, but that the failure to distinguish between high-voltage projects (with primarily regional benefits) and low-voltage projects (with primarily zonal benefits) was arbitrary and thus unjust and unreasonable.¹⁴⁰ Additionally, MISO South Regulators note, among other things, that, in *ODEC v. FERC*, the D.C. Circuit distinguished the treatment of MISO BRPs from the proposed treatment of project costs in PJM, and stated that MISO BRP benefits are local.¹⁴¹

50. MISO TOs similarly disagree with Complainants' reading of *ODEC v. FERC*.¹⁴² Here, MISO TOs argue that, in contrast to *ODEC v. FERC*, the Commission has directly and unambiguously found that BRPs provide primarily local benefits such that BRP cost allocation to the local pricing zone is consistent with the cost causation principle and "roughly commensurate standard."¹⁴³ MISO TOs also state that *ODEC v. FERC* does not stand for broad, sweeping conclusions about the value of regional cost allocation. Instead, they argue that the D.C. Circuit makes clear that it reached its result due to a lack of a sufficient support for the Commission's departure from its previous findings.¹⁴⁴ MISO TOs also argue that *ODEC v. FERC* does not stand for the proposition that the cost causation principle requires precise cost allocation on a project-by-project basis to meet the requirement that costs assigned and benefits received are roughly commensurate or

¹³⁸ MISO TOs Protest at 11-15 (citing BRP Rehearing Order, 147 FERC ¶ 61,127 at P 436).

¹³⁹ MISO South Regulators Protest at 8 (citing Complaint at 4-5).

¹⁴⁰ MISO South Regulators Answer at 5; *see also* MISO TOs Protest at 22 (citing *ODEC v. FERC*, 898 F.3d at 1261).

¹⁴¹ MISO South Regulators Answer at 5.

¹⁴² MISO TOs Protest at 21.

¹⁴³ *Id.* at 21-22.

¹⁴⁴ *Id.* at 24.

that a transmission provider must jettison a cost allocation method if it produces allegedly imprecise results for a single project.¹⁴⁵

51. MISO South Regulators and MISO TOs also argue that the Complainants overstate the relevance of the Artificial Island Decision.¹⁴⁶ MISO South Regulators explain that, in that decision, the Commission held that solely relying on a local solution-based method to allocate all of the costs of *stability-related* transmission projects was unjust and unreasonable.¹⁴⁷ However, MISO South Regulators assert that the Commission acknowledged that “stability is analytically unique compared to voltage or thermal overload problems.”¹⁴⁸

52. MISO TOs argue that the Artificial Island Decision did not involve a specific reliability project but an entire project category for which the Commission found the existing cost allocation method to be inappropriate.¹⁴⁹ Further, MISO TOs argue that the Commission determined that a flow-based cost allocation method that allocated a substantial share of the costs away from the localized area where the specific reliability issue arose did not allocate costs in a manner roughly commensurate with benefits. They state, however, that the Commission has already determined that BRPs primarily provide local benefits.¹⁵⁰

53. MISO South Regulators and MISO TOs also argue that Complainants misinterpreted and misapplied the 2019 Regional Cost Allocation Order.¹⁵¹ MISO TOs contend that the Commission rejected the Local Economic Project proposal underlying the 2019 Regional Cost Allocation Order because it would have required a potential project to satisfy a regional benefits test and a local benefits test to be approved. In

¹⁴⁵ *Id.* at 24-25.

¹⁴⁶ MISO South Regulators Protest at 10-11 (citing Complaint at 6).

¹⁴⁷ *Id.* at 11 (citing *Delaware Pub. Serv. Comm’n v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,035, at P 38 (2018) (*Delaware PSC & Maryland PSC v. PJM*), order on *reh’g*, 166 FERC ¶ 61,161 (2019) (emphasis added by MISO South Regulators)); MISO TOs Protest at 28.

¹⁴⁸ MISO South Regulators Protest at 11 (citing *Delaware PSC & Maryland PSC v. PJM*, 164 FERC ¶ 61,035 at P 38).

¹⁴⁹ MISO TOs Protest at 28.

¹⁵⁰ *Id.* at 29.

¹⁵¹ MISO South Regulators Answer at 5; MISO TOs Protest at 30-31.

contrast, MISO TOs argue that, for BRPs, MISO neither applies a regional benefits test nor calculates, then ignores, regional benefits for purposes of cost allocation.¹⁵²

54. GridLiance, on the other hand, states that the current BRP cost allocation is at odds with *ODEC v. FERC* and the most recent MISO 2019 Regional Cost Allocation Order because, in these decisions, the D.C. Circuit and the Commission, respectively, took issue with proposals that would prohibit regional cost sharing.¹⁵³

6. Multi-Value Project and Market Efficiency Project Development

55. MISO TOs argue that the Commission did not condition the BRP Order on a decline in BRP development, particularly when circumstances have not warranted the approval of multiple Market Efficiency Projects or Multi-Value Projects. Instead, they argue that, the Commission agreed that Market Efficiency Projects and Multi-Value Projects may displace BRPs when Market Efficiency Projects and Multi-Value Projects are appropriate instead.¹⁵⁴ Nonetheless MISO TOs assert that several factors have thwarted this predicted result, including: (1) the incorporation of MISO South,¹⁵⁵ (2) the approval of Multi-Value Project portfolio projects in 2011 (which were still being developed and placed into service during the period covered by the Pterra Report) providing numerous reliability, economic, and public policy benefits across the entire footprint, leaving only incremental reliability issues to be addressed in subsequent years, (3) approval of new Transmission Planning Reliability Standards during the years following approval of the MVP portfolio,¹⁵⁶ and (4) economic factors, such as low natural gas prices and coal retirements,¹⁵⁷ and stagnant load growth.¹⁵⁸

¹⁵² MISO TOs Protest at 30-31.

¹⁵³ GridLiance Comments at 5-6.

¹⁵⁴ MISO TOs Protest at 33.

¹⁵⁵ *Id.* at 34.

¹⁵⁶ *Id.* at 34-36.

¹⁵⁷ *Id.*; MISO TOs Protest at 37-38.

¹⁵⁸ MISO TOs Protest at 38-39.

56. MISO South Regulators argue that the Commission should disregard Complainants' request to ignore the MISO stakeholder process.¹⁵⁹ To this point, MISO South Regulators note that, following years of stakeholder proceedings, MISO proposed Tariff revisions that would reduce the minimum voltage threshold for Market Efficiency Projects from 345 kV to 230 kV,¹⁶⁰ a change that has the potential to increase the volume of BRPs that may qualify as Market Efficiency Projects and, thus, expand the total volume of projects upon which competitive developers can bid.¹⁶¹

7. Competitive Bidding and Benefits of Regional Cost Allocation

57. MISO South Regulators, ITC Companies, and OMS¹⁶² oppose making BRPs eligible for competitive bidding under the MISO Competitive Developer Selection Process. They argue that Complainants and supporting parties failed to justify this proposal in light of reliability concerns.¹⁶³ Such proposals, MISO South Regulators claim, disregard the rationale for BRP construction. Furthermore, MISO South Regulators argue that, in Order No. 1000 and its progeny, the Commission squarely rejected the proposition that incumbent transmission providers must issue a request for proposals or request for bids prior to any construction of a local transmission facility.¹⁶⁴

58. MISO South Regulators and ITC Companies argue that an overriding public interest in reliability justifies exempting certain transmission projects from competitive solicitation.¹⁶⁵ Further, MISO South Regulators and ITC Companies argue that Complainants fail to recognize the time-sensitive nature of BRPs and that subjecting such projects to competition would materially delay construction and operation of needed

¹⁵⁹ MISO South Regulators Protest at 22 (citing *Pub. Serv. Comm'n of Wisconsin v. FERC*, 545 F.3d 1058, 1062-63 (D.C. Cir. 2008)).

¹⁶⁰ *Id.* at 23.

¹⁶¹ *Id.*

¹⁶² See OMS Comments at n.3. OMS state that Michigan Commission does not take a policy position on this issue, in that it believes such issues should be discussed and agreed upon in a future stakeholder proceeding. *Id.*

¹⁶³ MISO South Regulators Answer at 6-7.

¹⁶⁴ MISO South Regulators Protest at 12 (citing *Coal. of Eastside Neighborhoods for Sensible Energy v. Puget Sound Energy*, 153 FERC ¶ 61,076, at PP 65 n.118 (2015)).

¹⁶⁵ *Id.* at 15; ITC Companies Protest at 3-4.

upgrades.¹⁶⁶ Further, MISO South Regulators note that, in previous orders reinstating a federal right of first refusal for transmission facilities needed in a short timeframe to address reliability needs, the Commission explained that “to avoid delays in the development of projects needed to resolve a time-sensitive reliability criteria violation, it was just and reasonable for the Responding RTOs to create a class of transmission projects that are exempt from competition.”¹⁶⁷ MISO South Regulators assert that the Commission recognized that exempting immediate need reliability projects from competition is just and reasonable in light of these concerns.¹⁶⁸ MISO South Regulators argue that this exception indicates the Commission’s recognition that, for purposes of Order No. 1000, “reliability takes precedence.”¹⁶⁹

59. GridLiance, Missouri River, and Securing America’s Future Energy contend that regionally beneficial projects should be open to competitive bidding under MISO’s Competitive Developer Selection Process.¹⁷⁰ GridLiance argues that MISO’s current BRP cost allocation method is anticompetitive and detrimental to ratepayers.¹⁷¹ If the Commission grants the Complaint, GridLiance asks the Commission to also direct MISO to remove Tariff and MISO Transmission Owners Agreement provisions that bar BRPs from MISO’s competitive process and grant MISO TOs a federal right of first refusal for such projects.¹⁷²

60. Securing America’s Future Energy emphasizes that the U.S. can protect critical energy infrastructure and maintain its national security, while also opening up the processes to build or upgrade such regional infrastructure to competition, within

¹⁶⁶ MISO South Regulators Protest at 15 (citing *Southwest Power Pool, Inc.*, 144 FERC ¶ 61,059, at P 195 (2013); *ISO New England, Inc.*, 143 FERC ¶ 61,150, at P 236 (2013); *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 247 (2013)).

¹⁶⁷ *Id.*; see also ITC Companies Protest at 5.

¹⁶⁸ MISO South Regulators Protest at 16 (citing *PJM Interconnection, L.L.C.*, 147 FERC ¶ 61,128, at P 165 (2014)).

¹⁶⁹ *Id.* at 15.

¹⁷⁰ GridLiance Comments at 3-4; Missouri River Comments at 4-5; Securing America’s Future Energy Comments at 2.

¹⁷¹ GridLiance Comments at 4.

¹⁷² *Id.* at 7-8.

transmission planning regions.¹⁷³ In support of doing so, Securing America's Future Energy cites a recent report prepared by the Brattle Group that estimates that the scope of competition could reasonably be expanded to one third of total transmission investments, and, doing so, would save consumers nearly \$8 billion over the next five years.¹⁷⁴

61. MISO South Regulators argue that Complainants are mistaken that subjecting BRPs to regional cost allocation will benefit ratepayers by reducing the return on investment of such projects.¹⁷⁵ They argue that most BRP costs are collected through retail rates and that returns on equity approved by state and local regulators pursuant to retail rate authority are historically lower than the rate transmission owners receive under the MISO Tariff. MISO South Regulators also argue that the Complainants' generalized statements about significant savings are premature and speculative.¹⁷⁶ MISO South Regulators also cite a white paper written by Concentric Energy Advisors issued in June 2019 that challenges the conclusions of the aforementioned report by the Brattle Group.¹⁷⁷

D. Complainants Answer

62. Complainants reiterate their view that the LODF method correctly identifies the beneficiaries of reliability upgrades on an interconnected grid. Complainants assert that no party directly challenged the Pterra Report analysis of beneficiaries or offered evidence defending the appropriateness of the current BRP cost allocation, which they argue showed projects where 30-50% of measured benefits are outside the local pricing zone.¹⁷⁸ Complainants state that MISO TOs and MISO instead dispute whether the LODF method measures benefits. However, Complainants argue that MISO equated impacts and benefits revealed by the LODF method when the Commission accepted "the change to the BRP cost allocation methodology [in the BRP Order]," and the

¹⁷³ Securing America's Future Energy Comment at 8.

¹⁷⁴ *Id.* at 6 (citing The Brattle Group, *Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value*, at 45, authored by Johannes Pfeifenberger and Judy Chang, et. al. (April 9, 2019) (hereinafter referred to as Brattle Report), highlights: <https://www.brattle.com/11887>).

¹⁷⁵ MISO South Regulators Protest at 18.

¹⁷⁶ *Id.* at 19.

¹⁷⁷ *Id.* at 20 (citing CEA White Paper at 8 (emphasis added by MISO South Regulators)).

¹⁷⁸ Complainants Answer at 3.

Commission acknowledged MISO's explanation that the LODF method identifies BRP beneficiaries based on the BRP's impact on flows.¹⁷⁹ Further, Complainants argue that, "[a]ssuming it is correct that LODF only shows impacts and not benefits, then [MISO] had no basis in the first instance to assert that BRPs provide primarily local benefits, or to continue that assertion."¹⁸⁰

63. Complainants state that every method of determining beneficiaries uses some proxy, the LODF method has been found by the Commission in 2006 to be a just and reasonable mechanism for determining BRP benefits,¹⁸¹ the Commission has accepted flow-based impact analyses to determine the beneficiaries of reliability-based projects in an interconnected grid,¹⁸² and the LODF method recognizes the interconnected nature of the grid and measures the impact for the interconnected facilities.¹⁸³ Complainants also disagree with MISO South Regulators' assertion that the Complaint is deficient for not addressing production cost savings; they argue that production cost savings are irrelevant to an assessment of reliability benefits.¹⁸⁴

64. In addition, Complainants dispute arguments that the Pterra Report's scope is insufficient to show that the current BRP cost allocation method is unjust and unreasonable. Complainants argue that a single project whose costs are misallocated is sufficient to show a cost allocation method to be unjust and unreasonable.¹⁸⁵ Complainants further argue that each BRP addresses a discrete issue and thus, it is irrelevant to the ratepayers of each

¹⁷⁹ *Id.* at 4 (citing BRP Order, 142 FERC ¶ 61,215 at P 484 & n.879 ("MISO explains that the LODF analysis identifies the beneficiaries of a [BRP] based on the impact that the [BRP] would have on the total flows in any other zone as a percentage of its total impact on flows in all other zones"))).

¹⁸⁰ *Id.* at 4 n.16.

¹⁸¹ *Id.* at 6 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 121).

¹⁸² *Id.* (citing *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 24 (2010)).

¹⁸³ *Id.* at 11.

¹⁸⁴ *Id.* at 8-11.

¹⁸⁵ *Id.* at 12-13 (citing *Delaware PSC & Maryland PSC v. PJM*, 164 FERC ¶ 61,035 at P 42).

individual project whether the cost allocation method provided a just and reasonable cost allocation for a different project, in a different locale, at a different time.¹⁸⁶

65. Complainants also object to MISO TOs' contention that including analysis of BRPs involving Entergy subsidiaries makes the Pterra Report deficient.¹⁸⁷ Complainants state that the Commission's analysis of cost allocation for the Entergy Operating Companies only applies to projects not selected in the regional transmission plan for purposes of cost allocation and that, if the Commission corrects the cost allocation for BRPs as requested in the Complaint, such BRPs will be selected in the regional transmission plan for purposes of cost allocation. Further, Complainants also dispute the assertion that the separate operating companies operate as one today.¹⁸⁸

66. Complainants further state that, despite protestor arguments,¹⁸⁹ the Complaint does not ask MISO to account for every conceivable potential BRP beneficiary, only that MISO not ignore cost allocation to known beneficiaries.¹⁹⁰ Complainants also disagree with arguments that the Complaint mistakenly relies on the notion that Commission policy requires that all project beneficiaries must pay for a project.¹⁹¹ Complainants argue that, in fact, their position is that, to the extent that the Commission can easily calculate a project's benefits, it should allocate costs so that the customers that benefit from the project pay the cost of the project, and that customers that do not benefit do not pay project costs.¹⁹²

67. Complainants contend that references to Order No. 1000 are out of context in this proceeding. First, Complainants state that MISO TOs' reference to Order No. 1000, wherein the Commission did not require that costs be assigned outside the planning region to beneficiaries in adjacent regions, is out of context as the issue in this Complaint is not cost allocation outside MISO. Rather, the Complaint concerns cost allocation within the MISO planning region, and nothing in Order No. 1000 suggests that similarly situated ratepayers should be treated differently based solely on location when they

¹⁸⁶ *Id.* at 14-15.

¹⁸⁷ *Id.* at 15-16 (citing BRP Rehearing Order, 147 FERC ¶ 61,127 at P 414).

¹⁸⁸ *Id.* at 16-17.

¹⁸⁹ *Id.* at 17 (citing MISO TOs Protest at 5-7, MISO Answer at 10-11).

¹⁹⁰ *Id.* at 20.

¹⁹¹ *Id.* at 22 (citing MISO South Regulators Protest at 1, 13-14).

¹⁹² *Id.*

benefit from a new transmission facility.¹⁹³ Second, Complainants contend that requiring exclusively local cost allocation for BRPs is not the same as the local exclusion that the Commission addressed in Order No. 1000, because in MISO exclusively locally oriented projects that a transmission owner chooses to build are categorized as Other Projects, not BRPs.¹⁹⁴ Third, Complainants argue that nothing in Order No. 1000 exempts BRPs from Commission review of cost allocation on a project-by-project basis and that MISO TOs' argument that Order No. 1000 determined that "the roughly commensurate standard does not depend on a project-by-project determination" is misleading as it references discussion about cost allocation for an aggregation of projects while costs of BRPs are allocated individually.¹⁹⁵

68. Complainants disagree with arguments that collateral estoppel bars the Complaint.¹⁹⁶ Complainants argue that the Complaint presents significant new evidence as to actual application of the current BRP cost allocation method and demonstrates that the circumstances relied upon in the BRP Order have changed.¹⁹⁷

69. Complainants argue that neither MISO nor protestors have established that the BRP cost allocation method is just and reasonable.¹⁹⁸ Complainants assert that protestors ignore that MISO is an interconnected grid operating as a single unit, and that what happens in one area will impact the rest of the system.¹⁹⁹

70. Complainants also argue that, if BRPs were truly local, they would be planned by individual transmission owners and categorized as Other Projects.²⁰⁰ Complainants state that BRPs address reliability issues that may be on an individual transmission owner system but that potentially impact regional reliability, while Other Projects address

¹⁹³ *Id.* at 25-26 (citing MISO TOs Protest at 6).

¹⁹⁴ *Id.* at 26-27.

¹⁹⁵ *Id.* at 28 (citing MISO TOs Protest at 25; Order No. 1000, 136 FERC ¶ 61,051 at P 627).

¹⁹⁶ *Id.* at 29 (citing MISO Answer at 3, 18-26; MISO South Regulators Protest at 21).

¹⁹⁷ *Id.*

¹⁹⁸ *Id.* at 43.

¹⁹⁹ *Id.* at 43-44.

²⁰⁰ *Id.* at 44.

“localized Transmission Issues.”²⁰¹ Complainants disagree that only the local pricing zone benefits when a violation is addressed²⁰² and assert that the prevention of a reliability violation benefits the interconnected transmission system.²⁰³

71. Further, Complainants assert that the Complaint only seeks regional cost allocation for BRPs that produce significant benefits outside the BRP’s local pricing zone. Complainants argue that protestors offer no proof to suggest that such BRPs do not produce regional benefits or evidence to counter the Pterra Report.²⁰⁴ Complainants also contend that MISO and MISO TOs contradict themselves when they rely on LODF results to argue that the BRP benefits are primarily local, but ask the Commission to disregard situations where the LODF method shows a different result that does not support their claims.²⁰⁵

72. Complainants disagree with MISO TOs’ description of *ODEC v. FERC*.²⁰⁶ Complainants assert that the issue that the D.C. Circuit addressed in *ODEC v. FERC*, and the issue in question in the Complaint is whether an entire category of projects can be excluded from regional cost allocation when evidence suggests that the project produces regional benefits.²⁰⁷

73. Complainants argue that MISO TOs and MISO South Regulators misstate Complainants’ reasons for citing the Artificial Island Decision to support the Complaint.²⁰⁸ Complainants state that this precedent emphasizes the importance of ensuring that a cost allocation method appropriately identifies beneficiaries, and allocates costs accordingly, for all projects.²⁰⁹ Additionally, Complainants dispute the suggestion that the Artificial Island Decision determination supports the BRP cost allocation

²⁰¹ *Id.* at 45.

²⁰² *Id.*

²⁰³ *Id.*

²⁰⁴ *Id.* at 47.

²⁰⁵ *Id.* at 49-50.

²⁰⁶ *Id.* at 51.

²⁰⁷ *Id.* at 51-52.

²⁰⁸ *Id.* at 54.

²⁰⁹ *Id.* at 54-55.

method.²¹⁰ Complainants state that, while the Commission moved away from PJM's flow-based method, it did not restrict the cost allocation exclusively to the zone in which the reliability issue arose.²¹¹ Complainants argue that this resulted in allocation of costs for the Artificial Island project across multiple zones, not simply the zone where the reliability problem manifested itself.²¹²

74. Complainants disagree with MISO TOs' characterization of the 2019 Regional Cost Allocation Order.²¹³ According to Complainants, the Commission rejected the proposed cost allocation because MISO could easily calculate the benefits and therefore cannot simply choose to ignore those benefits when allocating costs.²¹⁴

75. Complainants disagree with MISO TOs that granting the Complaint would result in a "proliferation" of cost allocation complaints that would "upend certainty."²¹⁵ To this point, Complainants clarify that, if the Complaint is granted, the result would apply to MTEP19 and prospectively for new BRPs.²¹⁶ Additionally, Complainants take issue with claims that competition may not produce ratepayer savings.²¹⁷ To this point, they note that the Complaint's central concern is just and reasonable cost allocation, and that arguments regarding competition should not determine the result.²¹⁸ However, Complainants argue that competition impacts the Commission's ability to determine just and reasonableness and has the potential to lower rates.²¹⁹ They further argue that a lack of competition means any shareholder value from new transmission is guaranteed to incumbent utilities.²²⁰

²¹⁰ Complainants Answer at 57.

²¹¹ *Id.*

²¹² *Id.*

²¹³ *Id.* at 48.

²¹⁴ *Id.* at 48-49.

²¹⁵ *Id.* at 60.

²¹⁶ *Id.*

²¹⁷ *Id.* at 62.

²¹⁸ *Id.*

²¹⁹ *Id.*

²²⁰ *Id.* at 70.

76. Finally, Complainants ask the Commission to accept written testimony without a notarized affirmation and waiver of the Commission's regulation to the extent that the notarization of written testimony does not fall within the parameters of the Commission Supplemental Notice Waiving Regulations in Docket No. AD20-11-000.²²¹

IV. Discussion

A. Procedural Matters

77. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

78. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to protests and answers unless otherwise ordered by the decisional authority. We accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

79. Regarding Complainants' request that the Commission accept written testimony without a notarized affirmation and waive relevant Commission regulations, we note that the Supplemental Notice Waiving Regulations found good cause to waive through September 1, 2020 "the Commission's regulations that require that filings with the Commission be notarized or supported by sworn declarations."²²² Thus, to the extent that such regulations would otherwise have applied to Complainants' written testimony, the Supplemental Waiver Notice grants waiver.

80. We deny OMS's motion to dismiss. While we encourage parties to follow the MISO stakeholder process when requesting changes to MISO's Tariff, Complainants have a statutory right to file a complaint pursuant to FPA section 206.²²³

B. Substantive Matters

81. We deny the Complaint and find that Complainants have not met their burden under section 206 of the FPA to demonstrate that the current BRP cost allocation method is unjust, unreasonable, or unduly discriminatory or preferential. The evidence provided and arguments advanced by Complainants and supporting parties do not upset the Commission's finding in the BRP Order that "the [transmission] pricing zone in which a

²²¹ *Id.* at 72-73.

²²² *Extension of Non-Statutory Deadlines*, Docket No. AD20-11-000 (May 8, 2020) (Supplemental Waiver Notice).

²²³ *See, e.g., EDF Renewable Energy*, 163 FERC ¶ 61,003 at P 46.

[BRP] is located receives most of the benefits provided by that project, and therefore, . . . assigning all of the associated costs to that pricing zone results in an allocation of costs that is roughly commensurate to the distribution of the project's benefits."²²⁴ We also find that Complainants have not contradicted the finding in *MISO Transmission Owners v. FERC* that "spillover of benefits to other zones is modest enough to make the local allocation of costs 'roughly commensurate' with the allocation of benefits."²²⁵

82. The cost causation principle requires that "all approved rates reflect to some degree the costs actually caused by the customer [that] must pay them."²²⁶ The D.C. Circuit has explained that it evaluates compliance with the cost causation principle by "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."²²⁷

83. While multiple court decisions acknowledge the difficulty of measuring benefits to assess adherence to the cost causation principle, courts "have never required a ratemaking agency to allocate costs with exacting precision,"²²⁸ and have not required, as a rule, "that the Commission has to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars."²²⁹ Instead, the Seventh Circuit, for example, in *Illinois Commerce Commission v. FERC*, explained that the Commission may allocate costs if it "has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with" the assigned costs.²³⁰ However, the Commission is "not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits or benefits that are trivial in relation to the costs sought to be shifted to its members."²³¹ Additionally, the D.C. Circuit has noted that "the Commission is not bound to reject any rate mechanism

²²⁴ BRP Order, 142 FERC ¶ 61,215 at P 521.

²²⁵ 819 F.3d 329, 336 (*MISO TOs v. FERC*) (7th Cir. 2016) (affirming the Commission's approval of MISO's classification of BRPs as local transmission facilities).

²²⁶ *KN Energy, Inc. v. FERC*, 968 F.2d at 1300.

²²⁷ *Midwest ISO TOs v. FERC*, 373 F.3d at 1368.

²²⁸ *Id.* at 1369.

²²⁹ *Ill. Commerce Comm'n v. FERC*, 576 F.3d at 477.

²³⁰ *Id.*

²³¹ *Id.* at 476.

that tracks the cost causation principle less than perfectly” and that the Commission may rationally emphasize other, competing policies and approve measures that do not best match cost responsibility and causation.²³² The D.C. Circuit also stated that “balancing of the competing goals of reducing monitoring burdens and adopting policies that ensure that cost allocation maximally reflects cost causation is wholly reasonable under the deferential review [that courts] accord in rate-related matters.”²³³

84. We also note that Order No. 1000, pursuant to which the Commission adopted reforms to its electric transmission planning and cost allocation requirements, drew a distinction between “a transmission facility in a regional plan” such as the MTEP and “a transmission facility selected in a regional plan for purposes of cost allocation.”²³⁴ The latter type of facility “is one that has been selected, pursuant to a Commission-approved regional transmission planning process, as a more efficient or cost-effective solution to *regional* transmission needs.”²³⁵ BRPs, on the other hand, even though they are approved through the MTEP, are considered local transmission facilities required to ensure compliance with applicable reliability standards.²³⁶ Order No. 1000 defines a local transmission facility as “a transmission facility located solely within a public utility transmission provider’s retail distribution service territory or footprint that is not selected in the regional transmission plan for purposes of cost allocation.”²³⁷ In an RTO or ISO “whose footprint covers the entire region, . . . local transmission facilities are defined by reference to the retail distribution service territories or footprints of its underlying transmission owning members.”²³⁸ While the Commission in Order No. 1000 eliminated federal rights of first refusal to develop certain transmission facilities, the Commission did not do so for local transmission facilities like BRPs, which are not selected in the

²³² *S.C. Pub. Serv. Auth v. FERC*, 762 F.3d at 88 (quoting *Carnegie Nat. Gas Co. v. FERC*, 968 F.2d 1291, 1293-94 (D.C. Cir. 1992)).

²³³ *Id.*

²³⁴ Order No. 1000, 136 FERC ¶ 61,051 at P 5.

²³⁵ *Id.* (emphasis added)

²³⁶ MISO FERC Electric Tariff, Attach. FF, § II.A.1(78.0.0) (“[BRPs] are Network Upgrades identified . . . as required to ensure that the Transmission System is in compliance with applicability . . . reliability standards”).

²³⁷ Order No. 1000, 136 FERC ¶ 61,051 at P 63.

²³⁸ Order No. 1000-A, 139 FERC ¶ 61,132 at P 429.

regional transmission plan for purposes of cost allocation.²³⁹ Specifically, the Commission explained that Order No. 1000 continues to permit an incumbent transmission provider to meet its reliability needs or service obligations by choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not submitted for regional cost allocation.²⁴⁰

85. In 2016, in *MISO TO v. FERC*, the Seventh Circuit addressed LSP Transmission Holdings, LLC's petition for review of the Commission's approval of MISO's classification of BRPs as local transmission facilities. LSP Transmission Holdings, LLC argued that this classification was in violation of Order No. 1000 because "when a [BRP] will span two or more pricing zones," it "must be considered regional and . . . Order No. 1000 forbids allowing rights of first refusal for such projects."²⁴¹ The Seventh Circuit disagreed, stating that, while the Commission "is not allowed to exempt all reliability projects from cost sharing,"²⁴² a "transmission facility is not regional for purposes of cost allocation if all its costs are allocated to the [transmission] pricing zone in which it is located."²⁴³ The Seventh Circuit further stated that a "right of first refusal would be problematic only if the benefits of a [BRP] were *largely or entirely realized* in pricing zones other than the one in which the project was to be built."²⁴⁴ In support of its agreement with the Commission that BRPs are local transmission facilities, the Seventh Circuit noted that "[the Commission's] calculations suggest that spillover of benefits to other zones is modest enough to make the local allocation of costs 'roughly commensurate' with the allocation of benefits."²⁴⁵

86. We find that Complainants have not demonstrated that the current BRP cost allocation is unjust and unreasonable because the record here is not sufficient for us to conclude that a BRP's local pricing zone does not receive most of the benefits associated with the BRP. Thus, we cannot conclude that the BRP cost allocation method fails to allocate costs in a manner that is at least roughly commensurate with the distribution of

²³⁹ Order No. 1000, 136 FERC ¶ 61,051 at PP 258, 318.

²⁴⁰ *Id.* PP 258, 262, 329; Order No. 1000-A, 139 FERC ¶ 61,132, at PP 366, 425, 428.

²⁴¹ *MISO TOs v. FERC*, 819 F.3d at 335.

²⁴² *Id.*

²⁴³ *Id.* at 336.

²⁴⁴ *Id.*

²⁴⁵ *Id.* at 336.

benefits. To this point, we note that the explicit purpose of BRPs, as stated in the MISO Tariff, is “to ensure that the Transmission System is in compliance with applicable Electric Reliability Organization []reliability standards and reliability standards adopted by Regional Reliability Organizations and applicable within the Transmission Provider Region.”²⁴⁶ We also note that, in practice, the type of reliability issue that a BRP is designed to address is typically specific to a particular transmission facility or set of facilities owned by the same transmission owner.²⁴⁷ Because the issues that BRPs are designed to address are specific and localized, we find that Complainants have not demonstrated that it is no longer just and reasonable for MISO to maintain its current BRP cost allocation method, which allocates costs to the transmission pricing zone where the BRP is located.

87. We also note that the value and meaning of the findings in the Pterra Report are mixed. Additionally, the sample of projects analyzed in the Pterra Report is highly selective.²⁴⁸ Moreover, MISO makes compelling arguments that, for some of the projects for which Complainants allege that the current BRP cost allocation method produces the most egregious cost misallocations, the Pterra Report may contain significant errors.²⁴⁹

88. Additionally, we find that the information provided in the 2016 and 2017 Informational Filings does not contradict the information that the Commission relied upon when it approved the BRP cost allocation in the BRP Order. More specifically, the 2016 and 2017 Informational Filings indicate that 80% of BRPs approved in the MTEP 2014 and MTEP 2015 would have had 100% of costs allocated to the BRP’s local pricing

²⁴⁶ MISO FERC Electric Tariff, Attach. FF, § II.A.1 (78.0.0).

²⁴⁷ See Webb Test. at 8 (“The overwhelming majority of BRPs address a specific violation of NERC Transmission Planning Standards . . . on a specific transmission facility or set of facilities owned by the same Transmission Owner”).

²⁴⁸ Complaint at 26 (“29 projects [of at least 400 that could have been analyzed] were included as a sample of projects approved after 2013 that (1) could provide benefits beyond the transmission pricing zone in which the project was physically located, (2) are from different MTEP years, and (3) are geographically diverse within the MISO footprint”).

²⁴⁹ For example, for Project 8113, which the Complaint alleges has misallocated 98% of its costs, the Webb Testimony argues that Complainants erroneously stated that the project was in the Xcel zone and not Great River Energy’s, which, according to Complainants received 69% of benefits. Webb Test. at 26; Complaint at 27. The Webb Testimony states that, in fact, the project is Great River Energy’s zone and thus, it is not inappropriate for Great River Energy to be responsible for its costs. Webb Test. at 26.

zone under the previous LODF method.²⁵⁰ Further, of the BRPs approved in MTEP 2014 and MTEP 2015 that would have been eligible for cost-sharing under MISO's previous Tariff provisions, more than 90% would have had at least 90% of their costs allocated to the local pricing zone.²⁵¹ In support of its decision in the BRP Order, the Commission noted that the record showed that 80% of BRPs that were eligible for cost-sharing and approved since 2006 had at least 75% of their costs allocated locally, with more than half of those projects having more than 90% of their cost allocated to the local pricing zone.²⁵²

89. Although Complainants are correct that MISO's prediction that Multi-Value Projects and Market Efficiency Projects would displace BRPs was a "key factor" in the Commission's decision in the BRP Order, this prediction likewise does not provide grounds for granting the Complaint. We note that the Commission found MISO's contention on this point to be "persuasive"²⁵³ but that it required that MISO submit an informational filing following the completion of MTEP 2015 to provide statistics regarding the development of Multi-Value Projects, Market Efficiency Projects, and BRPs during MTEP 2014 and MTEP 2015. While MISO's predictions on the development of Multi-Value Projects and Market Efficiency Projects have not to date materialized, we agree with MISO that circumstances, such as the MISO South integration, significantly affected trends in BRP development and that there is potential for expanded Market Efficiency Project opportunities in the future.²⁵⁴

90. Additionally, Complainants argue that *ODEC v. FERC*, the Artificial Island Decision, and the 2019 Regional Cost Allocation Order indicate that the current BRP cost allocation is not just and reasonable. However, we find that none of these decisions supports such a finding.

²⁵⁰ 2016 Informational Filing at 2; 2017 Informational Filing at 4.

²⁵¹ 2016 Informational Filing at 3.

²⁵² *Id.*

²⁵³ BRP Order, 142 FERC ¶ 61,215 at PP 519, 521.

²⁵⁴ We note, for example, that in a concurrent order in Docket Nos. ER20-1723-000 and ER20-1724-000, which the Commission is accepting concurrently with this order, MISO proposed to lower the Market Efficiency Project voltage threshold and to establish a new Avoided Reliability Project Savings metric for Market Efficiency Projects, which will measure savings realized by transmission customers when a Market Efficiency Project eliminates the need to develop one or more future reliability transmission projects. *Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,095.

91. In *ODEC v. FERC*, the D.C. Circuit remanded a Commission decision accepting a PJM Tariff amendment that would have allocated 100% of costs for projects that are included in the PJM Regional Transmission Expansion Plan solely to address individual transmission owner Form No. 715 local transmission planning criteria to the transmission zone of the transmission owner whose Form No. 715 local transmission planning criteria underlie these projects.²⁵⁵ In effect, the PJM amendment would have prohibited regional cost allocation for high-voltage transmission projects that have “significant regional benefits” if such transmission projects were included in a regional transmission plan only to satisfy an individual utility’s planning criteria.²⁵⁶ The Commission made this finding despite the fact that it had determined, on a prior occasion, that the type of high-voltage transmission facility at issue produces “significant regional benefits that accrue to all members of the PJM system.”²⁵⁷

92. The D.C. Circuit stated that, “[g]iven the significant regional benefits of high-voltage transmission lines, FERC’s decision to approve the amendment was arbitrary” because it “denies cost sharing for *all* projects included in the Regional Plan only to satisfy the planning criteria of individual utilities—including for high-voltage lines.”²⁵⁸ The D.C. Circuit concluded that the Commission’s acceptance of the PJM Tariff amendment “did not attempt to justify” this “wholesale departure from the cost causation principle.”²⁵⁹ The D.C. Circuit also stated that the cost causation principle “prevents regionally beneficial projects from being arbitrarily excluded from cost sharing—a necessary corollary to ensuring that the costs of such projects are allocated commensurate with their benefits.”²⁶⁰

93. We find that MISO BRPs are distinguishable for purposes of cost allocation from the types of regional PJM high-voltage facilities at issue in *ODEC v. FERC*. There, the

²⁵⁵ *ODEC v. FERC*, 898 F.3d 1254.; *see also PJM Interconnection, L.L.C.*, 154 FERC ¶ 61,096 (2016).

²⁵⁶ *ODEC v. FERC*, 898 F.3d at 1261.

²⁵⁷ *Id.* at 1257.

²⁵⁸ *Id.* 1261.

²⁵⁹ *Id.*

²⁶⁰ *Id.* The D.C. Circuit further stated that the Commission had chosen to replace a cost allocation “about which [it] ha[d] expressed no concerns with another one that is less accurate overall, as well as grossly inaccurate with respect to high-voltage projects, in return for no countervailing regulatory benefit.” *Id.*; *see also* 2019 Regional Cost Allocation Order, 167 FERC ¶ 61,258 at P 61.

D.C. Circuit's concern was with the fact that PJM's cost allocation arbitrarily prevented regional cost allocation for high-voltage projects that the Commission had previously recognized produce significant regional transmission benefits. As noted above, however, the Complainants have not met their burden to show that BRPs similarly produce significant regional transmission benefits. Furthermore, the D.C. Circuit in *ODEC v. FERC* distinguished the types of transmission facilities and the cost allocation method under examination in that decision from BRPs and the current BRP cost allocation method. The D.C. Circuit noted the Commission's finding that the BRP cost allocation method "was supported by a finding that the benefits of [BRPs are] realized primarily in the [transmission] pricing zone in which the project is located."²⁶¹

94. In the Artificial Island Decision, the Commission denied rehearing of a decision finding it unjust and unreasonable for PJM to rely solely upon a particular cost allocation method for regional transmission facilities that address stability-related reliability issues.²⁶² The Commission stated that PJM's preferred cost allocation method would allocate costs based upon changes in power flows revealed through that method.²⁶³ The Commission noted, however, that these changes in flows would only show the use of the facility whose costs are to be allocated and that such use is "neither connected with the need for the project, nor provides benefits to the parties being assigned cost responsibility."²⁶⁴ The Commission also stated that stability-related reliability issues, which created the need to be addressed by the transmission facilities at issue in the Artificial Island proceeding, are "analytically unique compared to voltage or thermal overload problems" and therefore "stability-related reliability issues require a different analysis of costs and benefits" than the one that PJM had proposed.²⁶⁵ The Commission concluded that certain parties that would have accrued costs pursuant to PJM's proposed method "neither caused the need for the line, nor . . . benefit from those flows sufficiently because [the] transmission system already was adequate to serve [their] load without" the transmission project in question.²⁶⁶ It continued, stating that "the parties whose load made the Artificial Island Project necessary are not the same parties that have flows on the transmission facility identified by PJM to address the stability-related reliability

²⁶¹ *ODEC v. FERC*, 898 F.3d at 1262 (citing BRP Order, 142 FERC ¶ 61,215 at P 520).

²⁶² Artificial Island Decision, 166 FERC ¶ 61,161 at P 37.

²⁶³ *Id.* P 14.

²⁶⁴ *Id.* P 38.

²⁶⁵ *Id.* P 38.

²⁶⁶ *Id.* P 40.

issue.”²⁶⁷ Consequently, the Commission concluded that the costs that PJM would have allocated under its proposal “would not be at least roughly commensurate with the benefits received.”²⁶⁸

95. The Artificial Island Decision does not dictate the result that the Commission should reach with regard to the Complaint. Complainants allege that, for 12 out of 400 BRPs developed in the relevant period, the Pterra Report purports to demonstrate that, even though all costs are allocated to the BRP’s local pricing zone, a significant share of the benefits produced by the BRP are realized elsewhere based on an LODF analysis. Such a situation is distinguishable from the Artificial Island Decision, where pursuant to PJM’s preferred cost allocation method, “the load being allocated costs may neither have caused the need for the transmission facility, nor received commensurate benefits from flows.”²⁶⁹ In that decision, the cost allocation method that the Commission required addressed “the analytically unique nature of stability-related reliability issues,” and for these reasons, the Commission determined that PJM’s proposed cost allocation method did not allocate costs in a manner that is at least roughly commensurate with benefits.²⁷⁰ This situation is distinguishable from the circumstances underlying the Complaint because, as MISO notes, a BRP’s explicit purpose (and thus, its primary benefit) is to address a specific reliability issue in a transmission owner’s pricing zone. As noted above, Complainants have not met their burden through the Pterra Report or otherwise to demonstrate that BRPs serve the specific needs of, or provide significant benefits to, customers in other transmission pricing zones.

96. Furthermore, in the 2019 Regional Cost Allocation Order, the Commission rejected proposals by MISO to, among other things, adopt the Local Economic Project category and its proposed cost allocation method.²⁷¹ The Commission found the proposed cost allocation method unjust and unreasonable because MISO’s proposed metrics analysis, which would have required Local Economic Projects to meet a region-wide 1.25-to-1 or greater benefit-to-cost ratio *and* a local 1.25-to-1 or greater benefit-to-cost ratio in each transmission pricing zone in which the Local Economic Project would be located, was at odds with MISO’s proposed cost allocation method, which would allocate costs only to the transmission pricing zone(s) where the project would be

²⁶⁷ *Id.*

²⁶⁸ *Id.*

²⁶⁹ *Id.*

²⁷⁰ *Id.* PP 38, 44.

²⁷¹ 167 FERC ¶ 61,258 at P 1.

located.²⁷² The Commission concluded that MISO's proposal to more precisely calculate the distribution of regionwide benefits for Local Economic Projects and then ignore these results to allocate the costs only to the local pricing zone was inconsistent with the cost causation principle.²⁷³

97. Unlike the 2019 Regional Cost Allocation Order, the Complaint does not allege that MISO's BRP cost allocation method identifies BRP benefits and chooses to disregard them for purposes of cost allocation. Rather, Complainants argue that the current BRP cost allocation method does not attempt to identify benefits outside the BRP's local transmission pricing zone. However, we reiterate that Complainants have not met their burden to show that the current cost allocation method does not result in an allocation of costs that is at least roughly commensurate with the distribution of benefits.

The Commission orders:

The Complaint is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

²⁷² *Id.* PP 56-66.

²⁷³ *Id.* PP 62-63.

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EXHIBIT B TO PETITION FOR REVIEW

*Coalition of MISO Transmission Customers v.
Midcontinent Indep. Sys. Operator, Inc.,*
**Notice of Denial of Rehearing by Operation of Law,
Docket No. EL20-19-001,
172 FERC ¶ 62,179
(September 28, 2020)**

172 FERC ¶ 62,179
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Coalition of MISO Transmission Customers
Industry Energy Consumers of America
LS Power Midcontinent, LLC

Docket No. EL20-19-001

v.

Midcontinent Independent System Operator, Inc.

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW

(September 28, 2020)

Rehearing has been timely requested of the Commission's order issued on July 28, 2020 in this proceeding. *Coalition of MISO Transmission Customers v. Midcontinent Indep. Sys. Operator, Inc.*, 172 FERC ¶ 61,099 (2020).

In the absence of Commission action on the request for rehearing within 30 days from the date the request was filed, the request for rehearing may be deemed to have been denied. 16 U.S.C. § 825l(a); 18 C.F.R. § 385.713(f) (2020); *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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