

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

**Coalition of MISO Transmission Customers,** )  
**Industrial Energy Consumers of** )  
**America, LS Power Midcontinent, LLC** )  
 )  
**Complainants,** )  
 )  
**Midcontinent Independent System** )  
**Operator, Inc.** )  
 )  
**Respondent** )

**Docket No. EL20-19-000**

**MOTION TO ANSWER AND ANSWER OF COMPLAINANTS TO  
RESPONDENT'S ANSWER AND CERTAIN PROTESTS**

**Coalition of MISO Transmission  
Customers**

Robert A. Weishaar, Jr.  
McNees Wallace & Nurick, LLC  
1200 G Street, NW, Suite 800  
Washington, DC 20005

Kenneth R. Stark  
McNees Wallace & Nurick, LLC  
100 Pine Street  
Harrisburg, PA 17101

**Industrial Energy Consumers of America**

Paul N. Cicio  
President  
1776 K Street, NW, Suite 720  
Washington, DC 20006

**LS Power Midcontinent, LLC**

Michael R. Engleman  
Robert C. Fallon  
Christina Switzer  
Engleman Fallon, PLLC  
1717 K Street, NW, Suite 900  
Washington, DC 20006

Sharon K. Segner  
Vice President  
LS Power  
1001 19th Street North  
Suite 1200  
Arlington, VA 22209

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**MOTION TO ANSWER AND ANSWER OF COMPLAINANTS TO  
RESPONDENT’S ANSWER AND CERTAIN PROTESTS**

Pursuant to Rules 212 and 213 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice,<sup>1</sup> the Coalition of MISO Transmission Customers, the Industrial Energy Consumers of America, and LS Power Midcontinent, LLC (collectively, “Complainants”), move to Answer and provide the following Answer to: (i) the Answer of the Midcontinent Independent System Operator, Inc. (“MISO”);<sup>2</sup> (ii) the MISO incumbent transmission owners’ Protest;<sup>3</sup> (iii) the MISO South Regulators’ (“Southern Regulators”) Protest;<sup>4</sup> and (iv) the ITC MISO Operating Companies’ (“ITC Companies”) Protest (collectively, “Challengers”).<sup>5</sup> As discussed below, despite hundreds of pages in answer or protest, the Challengers did not

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<sup>1</sup> 18 C.F.R. §§ 385.212 and 385.213 (2020).  
<sup>2</sup> Midcontinent Independent System Operator, Inc. Answer, Docket No. EL20-19-000 filed on May 1, 2020 (“MISO Answer”).  
<sup>3</sup> MISO Transmission Owners Protest, Docket No. EL20-19-000 filed on May 1, 2020 (“MISO TO Protest”).  
<sup>4</sup> MISO South Regulators Protest, Docket No. EL20-19-000 filed on April 29, 2020 (“Southern Regulators Protest”).  
<sup>5</sup> ITC MISO Operating Companies Protest, Docket No. EL20-19-000 filed on May 1, 2020 (“ITC Companies Protest”).

meaningfully dispute the fact that the projects listed in the Complaint and Pterra Report, shown as having significant extra-zonal benefits, actually have significant benefits outside the zone receiving the 100% cost allocation. Instead, the Challengers offer the Commission little more than rhetoric and obfuscation in their defense of a cost allocation method that merely assumes the beneficiaries of every Baseline Reliability Project (“BRP”) are located exclusively in the zone where the BRP is located, despite substantive and unchallenged evidence to the contrary.

## **I. MOTION TO ANSWER**

The Commission generally prohibits answers to protests, unless otherwise ordered by the decisional authority, except when specifically authorized by Rule 213 of the Commission’s Rules of Practice and Procedure. The Commission accepts answers in circumstances where doing so will clarify the issues and otherwise assist the Commission in its decision-making.<sup>6</sup> In an attempt to derail the Complaint, Challengers, with three months to respond to the Complaint, lob a smorgasbord of legal, policy and technical objections at the Commission. This Answer will clarify the variety of objections Challengers raise and assist the Commission in deciding the Complaint.<sup>7</sup> Therefore, Complainants request that the Commission accept the following Answer to the responsive pleadings filed by: (i) MISO; (ii) the MISO transmission owners; (iii) the Southern Regulators; and (iv) the ITC Companies.

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<sup>6</sup> See, e.g., *Midcontinent Independent System Operator, Inc.*, 158 FERC ¶ 61,128, at P 5 (2017)(accepting answers that provided information that assisted the Commission in its decision-making process); *PJM Interconnection, L.L.C.*, 119 FERC ¶ 61,318, at P 36 (2007)(permitting answers to answer where the Commission found the information assisted the Commission in its decision-making process); *California Independent System Operator Corp.*, 125 FERC ¶ 61,384, at P 9 (2008)(accepting answer to protest because it aided the Commission’s understanding of the issues raised).

<sup>7</sup> *Southwest Power Pool, Inc.*, 143 FERC ¶ 61,018, at P 15 (2013)(accepting answer that assisted in the decision-making process); *California Independent System Operator Corporation*, 105 FERC ¶ 61,284, at P 10 (2003)(accepting answer that clarified the issues).

## II. ANSWER

### A. The Line Outage Distribution Factor (“LODF”) Methodology Correctly Identifies the Beneficiaries of Reliability Upgrades Of An Interconnected Grid

#### 1. MISO Told The Commission That LODF Is A Just and Reasonable Method for Identifying Beneficiaries of Reliability Projects

The Complaint asserts that the cost allocation methodology for BRPs is unjust and unreasonable because it does not measure beneficiaries at all, but instead allocates all costs based on the physical location of the BRP, irrespective of beneficiaries. The Challengers to the Complaint failed to address this assertion head-on by challenging the analysis of the beneficiaries of the specific BRPs addressed by the Pterra Report. Nor did they offer any substantive evidence that it is appropriate to allocate 100% of the costs of a BRP to the zone in which a BRP is physically located when 30%, 40% or even 50% of ‘measured’ benefits go to users of the integrated grid outside the zone where the BRP is located. Instead, the Challengers simply asserted that the LODF<sup>8</sup> analysis does not measure beneficiaries at all and therefore cannot form the basis of the Complaint.<sup>9</sup>

For example, the MISO transmission owners state, “Complainants premise their Complaint on the flawed belief that the LODF methodology measures ‘benefits’ such that if any LODF impacts are realized outside of the pricing zone where a BRP is located, 100% cost allocation to that zone would not be roughly commensurate with benefits.”<sup>10</sup> For its part, MISO states that “the LODF methodology used by the Pterra Report is a measure of *impacts* rather than *benefits*.”<sup>11</sup>

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<sup>8</sup> Line Outage Distribution Factor (“LODF”) remains a defined term in the MISO Tariff.

<sup>9</sup> MISO Transmission Owners (“TO”) Protest at 8-9, n.23; MISO Answer at 4, 23, 36-38; Southern Regulators Protest at 4, 16-18.

<sup>10</sup> MISO TO Protest at 8-9.

<sup>11</sup> MISO Answer at 23 [emphasis in original].

While expected from a group of transmission owners worried about the rate base impacts of potential competition, it is disappointing that MISO, with its independence obligations, took this tact. MISO itself told the Commission that impacts and benefits are one and the same when it comes to LODF and reliability projects. Specifically, when it accepted the change to BRP cost allocation methodology the Commission noted that “MISO explains that the LODF analysis *identifies the beneficiaries* of a Baseline Reliability Project *based on the impact* that the Baseline Reliability Project would have on the total flows in any other zone as a percentage of its total impact on flows in all other zones.”<sup>12</sup>

Furthermore, the Challengers are not correct that the impacts shown by an LODF analysis do not translate into real benefits for the impacted transmission owner. As support, Complainants provide with this answer the testimony of Ricardo R. Austria of Pterra, Inc.<sup>13</sup> Mr. Austria makes clear that the impact shown by an LODF analysis translates into a flow reduction on the lines of the impacted utility and that flow reduction translates into a variety of benefits to the neighboring utility, including “the ability to support more transactions, delay an upgrade, accommodate output from a new generator interconnection, among others, all of which represent a benefit to that region.”<sup>14</sup> As he concludes, “[t]he LODF measures the flow reduction as a proxy for the potential benefits the neighboring region may realize with the flow reduction, but stops short of identifying

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<sup>12</sup> *Midwest Indep. Transmission Sys. Operator, Inc. and the MISO Transmission Owners, et al.*, 142 FERC ¶ 61,215, at P 484, n.880 (2013)(accepting the revised cost allocation methodology effective June 1, 2013)(“BRP Cost Allocation Order”) [emphasis added], *order on reh’g & compliance*, 147 FERC ¶ 61,127 (2014)(“BRP Cost Allocation Rehearing Order”), *aff’d MISO Transmission Owners v. FERC*, 819 F.3d 329 (7<sup>th</sup> Cir.2009).

<sup>13</sup> *See Responsive Testimony of Ricardo R. Austria on behalf of Coalition of MISO Transmission Owners, Industrial Energy Consumers of America and LS Power Midcontinent, LLC* (“Austria Responsive Testimony”).

<sup>14</sup> *Austria Responsive Testimony* at 8:12-14.

which of the potential benefits that neighboring region should actually pursue.”<sup>15</sup> Indeed, LODF was the mechanism by which MISO and the MISO transmission owners used to demonstrate that the “benefits provided by Baseline Reliability Projects are realized primarily in the pricing zone where the Baseline Reliability Project is located.”<sup>16</sup>

Finally, even in seeking a change from LODF for BRPs, MISO recognized LODF as a just and reasonable determination of cost allocation for reliability projects: “MISO argues that, *even when an existing tariff provision is just and reasonable*, the FPA allows the Commission to approve a just and reasonable alternative.”<sup>17</sup> The Commission must therefore reject the assertions that LODF cannot stand as the basis for the Complaint because it measures “impacts” rather than “benefits.” MISO, in fact, continues to use LODF for cost allocation in certain circumstances.<sup>18</sup>

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<sup>15</sup> *Id.* at 8: 15-17.

<sup>16</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 487. Assuming it is correct that LODF only shows impacts and not benefits, then Challengers had no basis in the first instance to assert that BRPs provide primarily local benefits, or to continue that assertion.

<sup>17</sup> *Id.* at P 515. This statement by MISO is counter to its current assertion that LODF has not been shown to be just and reasonable. *See* MISO Answer at 36.

<sup>18</sup> When applicable, the reimbursement of certain generator interconnection costs is allocated pursuant to Attachment FF, Section III.A.2.d.4(d)(i) (Effective On January 30, 2018):

Projects of Voltage Below 345 kV: 50% of the applicable Project Cost for Generation Interconnection Projects with a voltage class below 345 kV shall be allocated on a sub-regional basis to all Transmission Customers in designated pricing zones. The designated pricing zones and the sub-regional allocation of the Project Cost shall be determined on a case-by-case basis in accordance with a Line Outage Distribution Factor Table (“LODF Table”) developed by the Transmission Provider which is similar in form to that attached hereto as Attachment FF-2. The LODF Table is based on Transmission System topology and Line-Outage Distribution Factors associated with the project under consideration and is used to determine the pricing zones to be included in the sub-regional allocation of the Project Cost. The percentage of the sub-regional allocation assigned to each designated pricing zone shall be determined based on the relative share between pricing zones of the sum of the absolute value of the product of the Line-Outage Distribution Factor on each Branch Facility in a pricing zone and the length in miles of the Branch Facility.

Section III.A.2.d.4(d)(ii) addresses lower voltage projects and the application of LODF to those facilities. *See also* Attachment FF-2 LODF Table. Attachment FF – ATCLLC D (Effective On: November 19, 2013) has a similar methodology as noted above, providing

The LODF Table is based on Transmission System topology and Line-Outage Distribution Factors associated with the project under consideration and is used to determine the pricing zones to be included in the sub-regional allocation of the Project Cost. The percentage of the sub-regional allocation assigned to each designated pricing zone shall be determined

LODF is also used today in Attachment LL of the MISO Tariff relating to the Congestion Management Process.<sup>19</sup>

Every cost allocation method of determining beneficiaries uses some proxy for the benefits. There are a multitude of measures for “benefits” that have been proposed and/or are in use in other jurisdictions for different types of projects.<sup>20</sup> LODF is no different and has been found by the Commission, at MISO and stakeholders’ request, to be a just and reasonable mechanism for determining benefits to allocate the costs of BRPs.<sup>21</sup> This finding is not surprising, as flow-based analyses of impacts are a Commission-accepted mechanism to determine the beneficiaries of reliability-based projects in an interconnected grid.<sup>22</sup>

The existing BRP methodology uses location as the sole beneficiary proxy, allocating 100% of the costs based on presumed benefits to the zone where the facility is located. The location-based methodology does not measure benefits at all, leaving the proponents of the

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based on the relative share between pricing zones of the sum of the absolute value of the product of the Line-Outage Distribution Factor on each Branch Facility in a pricing zone and the length in miles of the Branch Facility.

<sup>19</sup> Attachment LL, Study 3) – IDC PSS/E Base Case GLDF:

2. transmission facilities operated at 100kV and above within 10 buses from the monitored facility(s). If any Flowgates with a 3% to 5% distribution factor from Study 2 or Study 4 are impacted by 5% or more from a prior outage condition (Line Outage Distribution Factor (LODF)) from this Study 3, the Flowgate will be added to the list of Coordinated Flowgates.

<sup>20</sup> For instance, PJM uses load-ratio share and solution-based distribution factor (“DFAX”) to allocate the costs of some new transmission facilities.

<sup>21</sup> *Midwest Indep. Transmission Sys. Operator, Inc*, 114 FERC ¶ 61,106, at P 121, *order on technical conference, reh’g, clarification & compliance*, 117 FERC ¶ 61,241 (2006).

<sup>22</sup> *See, e.g. Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 24 (2010)(“SPP Cost Allocation Order”)(“SPP states that it undertook the Transmission Distribution Analysis to determine which facilities are used primarily for regional flows and therefore fulfill more of a highway function on an integrated transmission network, and which facilities are used more at the local level (i.e., byway). SPP explains that the Transmission Distribution Analysis assesses the responsiveness of different facilities to power transfers among SPP zones as indicated by the impact of illustrative transactions on the facilities included in the analysis.”)

methodology to use phrases like “*primary driver and beneficiary*”<sup>23</sup> and “*primarily benefit*”<sup>24</sup> to mask the lack of beneficiary measurement.<sup>25</sup> The Pterra Report applied LODF-mile as a proxy for the benefits from a transmission project in the same manner that MISO used LODF-mile for that purpose prior to 2013.<sup>26</sup> The methodology provides accuracy as to the cost causers as the impact/beneficiary determination is specific to the load flow model being used, which in turn represents planning assumptions of how the transmission system will be utilized under specific conditions, such as: assumed season (typically summer), assumed system coincident load (typically at the peak hour of the year), assumed generation dispatch (including assumptions on renewable power available, cost of fuel, availability of generators), assumed load management levels, assumed levels of behind-the-meter generation, among others.<sup>27</sup> The assumptions used by Pterra were the grid usage assumptions used by MISO in its power flow models.<sup>28</sup> LODF-mile method demonstrates that under this measure benefits are not *limited to* the local transmission owner’s zone, or more importantly local consumers who are currently supporting 100% of the costs.<sup>29</sup>

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<sup>23</sup> MISO TOs Protest at 10.

<sup>24</sup> MISO Answer, Testimony of Jeff Webb at 10-11 (“Webb Testimony”).

<sup>25</sup> As noted above, when the proponents of the non-measuring location-based methodology want to support it with a measurable benefits analysis, they use the LODF methodology. *See, e.g. Midcontinent Independent System Operator, Inc. Supplemental to Informational Filing*, Docket Nos. ER13-186-000 and ER13-187-000 at filed on March 17, 2017 at 2 (“MISO 2017 Updated Informational Filing”)(comparing the results of MISO’s LODF analysis of BRPs approved in 2015 and 2016 to the results of allocating costs solely to the zone where the project is located).

<sup>26</sup> *See, e.g., Austria Responsive Testimony* at 6:12-7:9.

<sup>27</sup> *Id.* at 8:20-9:6 (noting that “Projects that were incompletely modeled or not modeled at all in the MISO power flow cases or for which the details were not clear or not provided by MISO were not evaluated and therefore not included in the Pterra Report.”)

<sup>28</sup> *Id.*

<sup>29</sup> *See e.g., id.* at 9:19-10:20 (discussing Project 9716).

## 2. Southern Regulators Incorrectly Assert That The Complaint Is Deficient For Not Addressing Production Cost Savings

The Southern Regulators take the assertion that LODF does not measure beneficiaries a step further, appearing to make the claim that only production cost reductions equate to “ratepayer benefits.”<sup>30</sup> The Southern Regulators assert that “[t]he Complaint does not challenge any purported lack of benefit metrics in the Tariff. Neither does it link the change in flow measured using LODF to adjusted production cost savings.”<sup>31</sup> Both of these points are misplaced.

As to the first, the Complaint challenges the fact that ‘location’ is not a just and reasonable “benefit metric” upon which to allocate costs, because it offers no measurement of benefits at all, merely a presumption. As such, the MISO Tariff lacks a just and reasonable benefit metric for BRPs. In this regard, the Southern Regulators assert “[t]he Complaint spends a lot of time talking about benefits that it never specifically identifies” ignoring that it is reliability itself that is the benefit. Thus, when the Southern Regulators note that “LODF is useful in determining electrical proximity of different transmission systems,”<sup>32</sup> they are focused on the reason MISO used LODF for BRPs in the first instance: it is a measure of those proximate transmission facilities that are impacting a facility on which a reliability issue has been identified.<sup>33</sup> The purpose of BRPs is network reliability, *i.e.*, to ensure that the interconnected grid remains reliable.<sup>34</sup> Network

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<sup>30</sup> Southern Regulators Protest at 16.

<sup>31</sup> *Id.*

<sup>32</sup> *Id.* at 17.

<sup>33</sup> For an explanation of how reliability issues in an interconnected grid can impact those in electrical proximity to the transmission system with the reliability problem, *see Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, available at <https://www.energy.gov/sites/prod/files/oeprod/DocumentsandMedia/BlackoutFinal-Web.pdf>.

<sup>34</sup> *See e.g., Austria Responsive Testimony* at 4:16-18 (noting that the “new transmission line will reduce the flow on the parallel line, for one, but in addition, it will also reduce flows on all the other paths in the whole interconnected grid that are also operating in parallel.”).

reliability benefits those in “electrical proximity of different transmission systems.”<sup>35</sup> Indeed, for BRPs at or above 345 kV, until the change in cost allocation, the Commission approved allocating 20% of the costs across the MISO footprint because of the reliability benefits footprint-wide.<sup>36</sup> In contrast, the current location-based cost allocation methodology presumes that there are no reliability benefits from BRPs of 345 kV or higher outside the zone in which the project is located.

As to those transmission projects necessary for network reliability, the Southern Regulators complain that the proposed remedy, application of LODF, does not properly measure ratepayer benefits, yet they seem content with a methodology that makes no beneficiary measurement at all. While location may coincidentally align costs with benefits for a number of BRPs, location has a limited relationship to benefits for other projects. Given that the entirety of the Complaint and the Pterra Report was focused on the inappropriateness of location as the sole cost allocation benefit determinate for BRPs, the Complainants are at a loss as to the point the Southern Regulators are making when they assert “[t]he Complaint does not challenge any purported lack of benefit metrics in the Tariff.”<sup>37</sup>

As to the second point, the Southern Regulators correctly note that the Complaint does not “link the change in flow measured using LODF to adjusted production cost savings.”<sup>38</sup> This fact is not surprising because production cost savings are irrelevant to the Complaint and to an assessment of the benefits arising from a reliability project. The Southern Regulators’ misguided argument seems to flow from their incorrect observation that the “only benefit metric in current

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<sup>35</sup> Southern Regulators Protest at 17.

<sup>36</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241, at P 62. The Commission was originally concerned that 20% was not high enough given the reliability impacts of these facilities and set the matter for a technical conference. *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at P 44.

<sup>37</sup> Southern Regulators Protest at 16.

<sup>38</sup> *Id.*

MISO Tariff is adjusted production cost savings.”<sup>39</sup> Although it may be true that production cost savings are the only benefit metric in the MISO Tariff that undertakes an actual measurement regarding a transmission project category, as noted above, every cost allocation methodology is a proxy for benefits. The current BRP methodology simply declares that location is the appropriate proxy for benefits for every BRP, in every situation. That is precisely the point of the Complaint: a location-based methodology that is divorced from measuring benefits is not just and reasonable. It is incorrect that adjusted production cost is the only benefit metric reflected in the MISO Tariff.

The Southern Regulators assert that “reliability is a NERC requirement, not a measure of economic benefit.”<sup>40</sup> Yes. The Complainants have not confused this distinction, seeking only to allocate costs to those receiving a reliability benefit. This distinction also means that production cost savings are not the appropriate measure of benefits for a reliability-based project and, thus, is not mentioned in the Complaint as appropriate relief. The Commission has recognized that system reliability itself is a benefit, declaring:

The cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits. In determining the beneficiaries of transmission facilities, **a regional transmission planning process may consider benefits including**, but not limited to, the extent to which transmission facilities, individually or in the aggregate, **provide for maintaining reliability** and sharing reserves, production cost savings and congestion relief, and/or meeting Public Policy Requirements.<sup>41</sup>

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<sup>39</sup> *Id.* at 4, 16-18.

<sup>40</sup> Southern Regulators Protest at 5.

<sup>41</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 586 (2011)[emphasis added], *order on reh’g & clarification*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh’g & 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 (2014).

The provision provides a clear distinction between reliability benefits and production cost benefits. While a project could have both, that is not the case with BRPs. LODF appropriately measures the reliability benefits of BRPs.<sup>42</sup> Production cost savings are irrelevant to that measurement, and thus the Complaint.<sup>43</sup>

As noted above, multiple benefit proxies are used in various transmission planning regions. The Southern Regulators seem to understand this point in discussing MISO's interregional market efficiency filing, by noting that "LODF was to be used as a proxy to identify the MISO TPZ that is an electrical extension of the PJM zone so that the MISO TPZ is allocated the MISO share of a MISO/PJM IEP that is located solely in PJM."<sup>44</sup> A proxy to identify the electrical extensions from the transmission zone in which a BRP is being installed is exactly why LODF is relevant from a reliability perspective.<sup>45</sup> MISO is an interconnected grid. As such, many reliability issues are a function of the operations of that interconnected grid. Location-based cost allocation measures none of the contributions from the interconnected grid. LODF recognizes the interconnected nature of the grid and measures the impact for the interconnected facilities.<sup>46</sup> For this reason,

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<sup>42</sup> See e.g., *Austria Responsive Testimony* at 10:14-20 (discussing Project 9716 and noting that the "implementation of Project 9716 will not only benefit the owner of the rebuilt Coughlin to Plaisance 138 kV line, CLECO, but will also benefit the neighboring transmission companies such as Entergy Louisiana, for which application of the LODF method shows a LODF-mile share of about 35%. In this case, the LODF method identifies that flow benefits are not localized to CLECO but to neighboring transmission owners as well.").

<sup>43</sup> Because the Complaint is about reliability projects, Complainants are at a loss as to the purpose of the statement: "Bottom line—the only benefits that are relevant for the purpose of MEP cost allocation are the economic benefits approved by the Commission and contained in the MISO Tariff, none of which are identified in the Complaint." Southern Regulators Protest at 17. MEP cost allocation is not at issue in this proceeding.

<sup>44</sup> Southern Regulators Protest at 17 (discussing MISO's transmittal letter filed in Docket No. ER20-862-000 on Jan. 22, 2020).

<sup>45</sup> See, e.g., MISO Transmittal Letter, Docket No. ER06-18 filed on October 7, 2005 at 9-10.

<sup>46</sup> See, e.g., *SPP Cost Allocation Order*, 131 FERC ¶ 61,252 at P 21 (SPP noted that "due to the realities of an integrated network and Commission policies such as Order No. 890, transmission system planning in SPP has evolved from a utility-by-utility approach focusing primarily on maintaining reliability at the local level to a region-wide approach.")

planning regions routinely look to cost causation proxies using load flow analysis. For example, PJM uses a solution-based distribution factor method (“DFAX”) as a proxy for the benefits of new reliability facilities, except, as discussed below, where cost causation is not appropriately measured by flows over the new facilities.<sup>47</sup>

The Southern Regulators conclude their complaints about LODF with the following point:

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.’”<sup>48</sup>

Again, this is precisely the point of the Complaint. MISO adopted a location-based cost allocation methodology that ignores the comparison of burdens imposed or benefits drawn by any party outside the zone in which the project is located. MISO took this approach, not because those burdens or benefits are unmeasurable – MISO measured them with LODF until 2013 – but because measuring them may lead to competition.<sup>49</sup> The Southern Regulators’ point supports granting the Complaint, not defending a purely location-based cost allocation.

**3. Because The Pterra Report Showed That Location-Based Cost Allocation Fails To Allocate Costs Appropriately, The Location-Based Cost Allocation Methodology Cannot Be Held To Be Just and Reasonable**

Recognizing the accuracy of the Pterra Report, MISO and the MISO transmission owners critique the foundation of the Complaint by asserting that the Pterra Report is not of sufficient scope to show that the location-based cost allocation methodology is unjust and unreasonable. The

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<sup>47</sup> PJM Open Access Transmission Tariff, Schedule 12, Section (b).

<sup>48</sup> Southern Regulators Protest at 17-18 (quoting *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)).

<sup>49</sup> MISO and MISO Transmission Owner Transmittal Letter, Docket No. ER13-186-000 at 11 filed on October 25, 2012.

Challengers did not identify how many misallocated projects it takes before a cost allocation methodology is unjust and unreasonable. As the Commission found in *Delaware Pub. Serv. Comm'n & Maryland Pub. Serv. Comm'n, v. PJM Interconnection, L.L.C. and Certain Transmission Owners Designated under CTOA RS FERC No. 42*, 164 FERC ¶ 61,035, at P 42 (2018)(“*Delaware PSC I*”), *order on reh'g*, 166 FERC ¶ 61,161 (2019)(“*Delaware PSC II*”), it only takes one.<sup>50</sup> The Challengers are not able to point to any technical fatal flaw with the accuracy of the Pterra Report, so they are left to weakly assert that the Pterra Report “lacks sufficient robustness to draw any meaningful conclusions regarding the existing BRP cost allocation methodology.”<sup>51</sup> The MISO transmission owners go on to assert “[w]ithout more information about the selection criteria employed or data demonstrating that the analyzed projects are representative of BRPs overall, the Pterra analysis is unreliable and deserves no weight.”<sup>52</sup>

Critiquing the number of projects analyzed is nothing more than an assertion that the Commission’s obligation to ensure just and reasonable rates is a ‘most of the time’ standard. The Commission recognized the fallacy of the MISO transmission owners’ assertion in rejecting that same assertion in regard to PJM’s solution-based DFAX methodology, namely that because its reliability cost allocation methodology resulted in just and reasonable rates over 1200 times, unjust and unreasonable rates should not be addressed when observed.<sup>53</sup> The number of times that location happened to coincide with benefits for a specific BRP is not relevant to the Commission’s

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<sup>50</sup> In *Delaware PSC I* and *II*, the Commission determined that an unjust and unreasonable cost allocation for one project is sufficient to require reformation of the existing cost allocation methodology for that project and any other similarly situated projects.

<sup>51</sup> MISO TO Protest at 42.

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

<sup>53</sup> *Del. Pub. Serv. Comm'n v. PJM Interconnection, L.L.C.*, 155 FERC ¶ 61,090, at P 66 (2016), *order on reh'g*, 164 FERC ¶ 61,035 (2018) (“*Delaware PSC I*”), *reh'g denied*, 166 FERC ¶ 61,161 (“*Delaware PSC II*”), *order on reh'g*, 169 FERC ¶ 61,234 (2019)).

statutory obligation to ensure just and reasonable rates. The only relevant analysis is whether costs of the BRPs addressed in the Pterra Report<sup>54</sup> are allocated in a just and reasonable manner. The Complaint, with support from the Pterra Report, demonstrated that they are not.

To be clear, the Complainants have not argued that every BRP provides benefits outside the zone in which it is located. Indeed, LODF analysis shows that for some BRPs the benefits remain exclusively in the zone in which the project is located. That might be a relevant fact if the Complaint demanded regional cost allocation for all BRPs.<sup>55</sup> The Complaint does not. The Complaint instead seeks a legitimate analysis of the benefits of BRPs, so that those that have reliability benefits outside the zone in which they are located are cost allocated appropriately. The MISO transmission owners concede that the Pterra Report established this fact, noting “[t]he *fact* that Complainants’ LODF analysis of twenty-seven cherry-picked BRPs (out of the hundreds of BRPs approved during the study period) shows that, in limited circumstances, some BRPs impact zones other than the zone where the BRP is located does not support their request for a wholesale change in BRP cost allocation.”<sup>56</sup> For consumers in “twenty-seven cherry-picked” zones, the Commission’s just and reasonable rate obligation matters; the total misallocation for those twenty-seven projects was \$308,962,440.08 as highlighted in the table on pages 26-29 of the Complaint.

BRPs, while a category of projects, each address a discrete reliability need. It is irrelevant to the ratepayers of each individual project whether the non-measurement cost allocation

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<sup>54</sup> Both the MISO TOs and MISO make much of the fact that the Pterra Report included a couple of projects that were not BRPs. MISO TOs at 42-43; Webb Testimony at 25:18-22. Their critique carries no weight however, because both the Complaint and the Pterra Report fully disclosed this fact. Complaint at 8 n.17, 25 n.63, 29; Pterra Report at 11, 14, 44, 45, 50, 51, 61. They were included to show that the cost allocation deficiencies in MISO are not limited to BRPs, but likely include some of the \$2.8 billion in 2019 Other Projects. See Complaint at 2 n.4.

<sup>55</sup> The Commission has defined regional cost allocation as any costs going outside the zone in which the project is located. See *Order No. 1000-A*, 139 FERC ¶ 61,132 at P 430.

<sup>56</sup> MISO TO Protest at 10.

methodology provided a just and reasonable cost allocation for a different project, in a different locale, at a different time. BRPs are not like Multi-value Projects where it can be asserted that everyone in the region will receive their share of benefits. Even the Challengers acknowledge that BRPs address discrete issues, which necessarily have discrete drivers and discrete beneficiaries. Thus, identifying the beneficiaries correctly one time, or 100 times, or 1200 times (as in PJM) does not make the cost allocation methodology just and reasonable, where it does not identify the beneficiaries correctly more than “twenty-seven cherry picked” times.

Based on Commission precedent, because there are BRPs for which the location-based cost allocation does not provide for just and reasonable rates consistent with the Commission cost causation principles, the Commission must act. This is particularly true where there is a Commission-determined just and reasonable cost allocation methodology that does not suffer from the same deficiencies as the location-based methodology.

#### **4. The Fact That The Pterra Report Analyzed BRPs In Entergy Does Not Make It Deficient**

In a further attempt to assail the validity of the Pterra Report, the MISO transmission owners take issue with the fact that the Pterra Report analyzed BRPs involving Entergy subsidiaries, arguing that the Entergy Operating Companies are considered a single entity for purposes of “local” transmission.<sup>57</sup> This argument is misplaced for two reasons. First, the Commission’s analysis regarding the Entergy Operating Companies only applied as it related to projects “not selected in the regional transmission plan for purposes of cost allocation.”<sup>58</sup> Given that the focus of the Complaint is ensuring that BRPs are “selected in the regional transmission

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<sup>57</sup> MISO TO Protest at 43-44, *citing BRP Cost Allocation Rehearing Order*, 147 FERC ¶ 61,127 at P 414.

<sup>58</sup> *BRP Cost Allocation Rehearing Order*, 147 FERC ¶ 61,127 at P 414.

plan for purposes of cost allocation,” the critique is not well placed. The Commission clarified this point, holding:

Thus, a transmission facility located entirely within the combined Entergy transmission system footprint or within one or more of the Entergy Operating Companies’ individual retail distribution service territories *and that is not selected in the regional transmission plan for purposes of cost allocation will be a “local transmission facility” as defined by Order No. 1000.*<sup>59</sup>

If the Commission corrects the cost allocation for BRPs as requested in the Complaint, BRPs will be selected in the regional transmission plan for purposes of cost allocation. The Commission should thus reject the MISO transmission owners’ circular logic that because they declared only local cost allocation for BRPs, Entergy cannot be included in the analysis of whether that local cost allocation is just and reasonable.

Second, the MISO transmission owners also fail to recognize that the Entergy of today is not the Entergy of 2014. Entergy is no longer operated as a single company for relevant purposes. On August 31, 2016, the Entergy System Agreement was terminated.<sup>60</sup> In addition, as noted by the Louisiana Public Service Commission, Entergy joined MISO in 2013 which “rendered portions of the System Agreement irrelevant and redundant.”<sup>61</sup> With the dissolution of the Entergy System Agreement and the Entergy retail distribution companies’ entry into MISO, treating the Entergy retail distribution companies as a single “footprint” also went by the wayside. Entergy New Orleans and Entergy Louisiana agreed to separate so that New Orleans could have its own

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<sup>59</sup> *Id.* [emphasis added].

<sup>60</sup> Entergy Arkansas withdrew in December 2013 and Entergy Mississippi withdrew in November 2015. For a history of the withdrawals of the Entergy operating companies, see Louisiana Public Service Commission Order No. X-33755-A, available at <http://lpscstar.louisiana.gov/Star/ViewFile.aspx?Id=6368092a-981b-4ee1-b534-3781e893d912> (last accessed June 8, 2020).

<sup>61</sup> *Id.* at 2.

Transmission Pricing Zone.<sup>62</sup> The Commission also approved separate pricing zones for Entergy Texas<sup>63</sup> and Entergy Mississippi.<sup>64</sup> Thus, there is no validity to the assertion that the determination made in 2013 that “the separate operating companies actually operate as one and have so operated for more than fifty years” remains relevant today. In fact, as the Commission is abundantly aware,<sup>65</sup> it is the misallocation of costs among the operating companies that led to the termination of the Entergy System Agreement in the first place. Reliance on a location-based cost allocation for BRPs perpetuates those cost misallocations among the various Entergy retail companies.

**B. While Challengers Recite General Cost Allocation Principles, They Fail To Appropriately Apply Those Principles To The Facts At Hand**

The Challengers to the Complaint recite a number of general cost allocation principles, through selective case law quotes, without actually applying the principles to the issues raised in the Complaint. They argue (i) there can be more than one just and reasonable rate,<sup>66</sup> (ii) that cost allocation need not be perfect<sup>67</sup> and thus the Commission need not track down every beneficiary of a project,<sup>68</sup> and (iii) that even if Complainants show that some BRPs benefit other zones, this is not enough for Complainants to carry their Section 206 burden.<sup>69</sup> When reviewed in the context of the Complaint, many of the principles have no application to the facts at hand and are offered

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<sup>62</sup> *Id.* at 3.

<sup>63</sup> *Midcontinent Independent System Operator*, 162 FERC ¶ 61,063 (2018).

<sup>64</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 152 FERC ¶ 61,061 (2015).

<sup>65</sup> *See, e.g., Louisiana Pub. Serv. Comm’n v. Entergy Services Inc.*, Opinion No. 480, 111 FERC ¶ 61,311, *aff’d*, Opinion No. 480-A, 113 FERC ¶ 61,282 (2005), *remanded Louisiana Pub. Serv. Comm’n v. FERC*, 522 F.3d 378 (2008). Although these cases focus on generation, they make clear that appropriately allocating costs among Entergy’s retail subsidiaries is important to retail regulators.

<sup>66</sup> MISO TO Protest at 5 (citing *Indicated SPP Transmission Owners v. Sw. Power Pool, Inc.*, 162 FERC ¶ 61,213, at P 70 (2018); *see also, e.g., Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,109, at P 20 (2009)).

<sup>67</sup> MISO TO Protest at 7.

<sup>68</sup> *Id.* at 6.

<sup>69</sup> MISO Answer at 10-11.

to deflect from the fact that the Challengers cannot defend the location-based cost allocation for the projects referenced in the Pterra Report. The Commission’s obligation under the FPA to ensure that **all** rates are just and reasonable<sup>70</sup> requires more than the recitation of selective cost allocation principles. Rather, it requires an actual review of the cost allocation results from the employed methodology and a determination as to whether those results meet the cost allocation principles.<sup>71</sup> For the existing BRP location-based methodology, the results do not meet cost allocation principles and the Complaint should be granted.

Even the Challengers acknowledge that to develop just and reasonable rates, the Commission and the courts rely on the cost causation principle, a requirement that rates “reflect to some degree the costs actually caused by the customer who must pay them.”<sup>72</sup> The Challengers seize on words like “to some degree” as meaning they have free rein to develop a cost allocation methodology that works some of the time. Likewise, those defending a cost allocation methodology often rely on the “roughly commensurate” language as giving the Commission wide latitude regardless of the factual circumstances. For example, the Challengers quote, out of context, the phrase “means that the Commission does not have ‘to calculate benefits to the last penny, or for that matter to the last million or ten million or perhaps hundred million dollars.’”<sup>73</sup>

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<sup>70</sup> 16 U.S.C. § 824d, 16 U.S.C. § 824e. See the MISO transmission owners’ argument that “[t]he ‘just and reasonable’ standard under FPA section 206 is no different than that imposed under FPA section 205.” MISO TO Protest at 5 (citing *FirstEnergy Serv. Co. v. FERC*, 758 F.3d 346, 353 (D.C. Cir. 2014)).

<sup>71</sup> *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C.Cir.2004)(The Commission’s initial duty is to “compar[e] the costs assessed against a party to the burdens imposed or benefits drawn by that party”); see also, *ODEC*, 898 F.3d 1260-61 (rejecting the Commission attempt to exempt a whole class of projects, projects based on Form 715 planning criteria, from regional cost sharing); *Midcontinent Indep. Sys. Oper., Inc.*, 167 FERC ¶ 61,258, at P 64 (2019)(“MEP First Rejection Order”)(rejecting deviating from cost causation principle even though those projects were lower voltage transmission facilities than in *ODEC*).

<sup>72</sup> *K N Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C.Cir.1992); see MISO TO Protest at 5.

<sup>73</sup> MISO TO Protest at 6 (citing *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)); see also Southern Regulators Protest at 2.

The Court however made that statement in the context of an argument as to the feasibility of measuring benefits, explaining immediately after the statement cited by Challengers that

[i]f it cannot quantify the benefits to the midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine; the Commission can approve PJM's proposed pricing scheme on that basis.<sup>74</sup>

Here, there is no difficulty in measuring beneficiaries more precisely, as MISO did for years without complaint.

The Challengers apply these cited general principles to ask the Commission to give them a free pass on the fact that the BRP cost allocation presumes beneficiaries, based on location alone, yet those outside that zone can benefit substantially from the new transmission facility. The existing location-based BRP cost allocation methodology presumes that 100% percent of the costs are caused by consumers in the zone in which the project is located. Because of the interconnected nature of the transmission grid, this presumption would not be true even if cost causation looked only at those that contributed to the reliability need in the first instance. However, the cost causation principle establishes that those that benefit from new facilities, by, for example, improved reliability, have “caused” the costs to be incurred.<sup>75</sup> The end result of this process must be that costs are allocated “roughly commensurate” with benefits.<sup>76</sup>

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<sup>74</sup> *Ill. Commerce Comm’n v. FERC*, 576 F.3d at 477. See also *Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7<sup>th</sup> Cir. 2013)(where the court bluntly stated, “[I]t's not enough for Illinois to point out that MISO's and FERC's attempt to match the costs and the benefits of the MVP program is crude; if crude is all that is possible, it will have to suffice.”); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002)(“feasibility concerns play a role in approving rates”)(“*Sithe*”).

<sup>75</sup> *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C.Cir.2004); see also *El Paso Electric Company v. Federal Energy Regulatory Commission*, 832 F.3d 495 (5<sup>th</sup> Circuit 2016)(“rejecting cost allocation exempting non-jurisdictional utilities from paying costs as violating cost causation, which requires allocating costs in at least a roughly commensurate fashion to those who receive the benefits of transmission development.”).

<sup>76</sup> *Midcontinent Independent System Operator*, 162 FERC ¶ 61,063 (2018)(approving new Cost Allocation Zones for Texas and Louisiana for purposes of allocating costs of Market Efficiency Projects, in part, in

Just like the phrase “to some degree,” the Challengers to the Complaint use “roughly commensurate” as meaning anything they want. For example, the MISO transmission owners assert “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, as Complainants seem to suggest.”<sup>77</sup> The assertion misrepresents the Complaint. The Complaint does not ask that MISO “**track down** every conceivable potential beneficiary,” only that MISO not be permitted to ignore cost allocation to known beneficiaries. There is a significant difference between tracking down every potential beneficiary and closing your eyes to beneficiaries standing right in front of you.<sup>78</sup> The location-based BRP methodology does the latter.

The Commission’s initial duty is to “compar[e] the costs assessed against a party to the burdens imposed or benefits drawn by that party.”<sup>79</sup> The location-based cost allocation methodology does not do that, but the LODF methodology would address that requirement. Complainants have provided strong evidence showing that automatically allocating BRP costs only to the zone where the BRP is physically located does not result in a cost allocation that is roughly commensurate with the beneficiaries of those BRP projects.<sup>80</sup> At the same time,

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response to MISO arguments that otherwise would require the Commission to allow Texas to enjoy the benefits of a project without paying a commensurate share of the costs contrary Commission precedent stating that benefits and costs should be “roughly commensurate.”).

<sup>77</sup> MISO TO Protest at 6.; *see also* Southern Regulators Protest at 1-2.

<sup>78</sup> *See BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014); *see also Ala. Elec. Coop., Inc. v. F.E.R.C.*, 684 F.2d 20, 27 (D.C. Cir. 1982)(“[p]roperly designed rates should produce revenues from each class of customers which match, as closely as practicable, the costs [or the benefit in the case of BRP] to serve each class or individual customer.”).

<sup>79</sup> *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C.Cir.2004).

<sup>80</sup> To that extent, Complainants differ from the Illinois Commerce Commission in the Multi-Value Projects case, cited by Complainants, *Illinois Commerce Commission v. FERC*, 721 F. 3d. 764 (7<sup>th</sup> Cir. 2013) where the court said, “Illinois's briefs offer no estimates of costs and benefits.”

Complainants have shown that there is a cost allocation method – the Line Outage Distribution Factor – that identifies the beneficiaries of BRP projects and allocates costs accordingly, thereby ensuring that the costs of BRP are allocated “roughly commensurate” with the benefits of those projects.<sup>81</sup>

The Southern Regulators argue that the “roughly commensurate” standard applies only to customers who have been assigned costs, not to customers who have not received a cost allocation.<sup>82</sup> That argument is directly contrary to the holding in *BNP Paribas*, *i.e.*, that the Commission “generally 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.”<sup>83</sup> Likewise, in Order No. 1000, the Commission required that the “cost of transmission facilities must be allocated to those within the transmission planning region that benefit from those facilities in a manner that is at least roughly commensurate with estimated benefits.”<sup>84</sup> The location-based BRP cost allocation methodology does not do that.

The Commission rejected this same argument related to the application of solution-based DFAX to the Artificial Island Project with the PJM transmission owners arguing that the Commission should not have found the application of solution-based DFAX unjust and unreasonable because it failed “to identify any evidence demonstrating that transmission customers in the various PJM zones will not benefit from their usage of the AI [Artificial Island] Project in

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<sup>81</sup> See *Austria Responsive Testimony* at 8:7-17 (providing an example of how LODF translates into real benefits, such as the “ability to support more transactions, delay an upgrade, accommodate output from a new generator interconnection, among others, all of which represent a benefit to that region.”).

<sup>82</sup> Southern Regulators Protest at 7-8.

<sup>83</sup> *BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 268 (D.C. Cir. 2014).

<sup>84</sup> *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at P586. The Southern Regulators assert, without citation, that “[l]ike in Order No. 1000” the 7<sup>th</sup> Circuit concluded that the analysis of cost allocation only focused on the benefits of the party to whom cost are assigned.” Southern Regulators Protest at 8. Order No. 1000 stands for no such proposition.

the proportions identified by Solution-based DFAX or any basis for disregarding those benefits.”<sup>85</sup> The Commission acknowledged that “due to the interconnected nature of the system, Delmarva Parties will use the Artificial Island Project as measured by the solution-based DFAX method” but declared that looking only at one set of benefits did not adequately address the benefits and cost causers of the project at issue.<sup>86</sup>

Similarly, the Southern Regulators argue that the “Complaint is predicated on the mistaken notion that Commission policy requires that all customers that benefit from a transmission project must pay for that project.”<sup>87</sup> To the contrary, the Complaint is predicated on the simple notion that to the extent that the Commission can easily calculate the benefits of a project, the Commission should calculate those benefits so that the customers who benefit from the project pay the cost of the project, and the customers that do not benefit do not pay the costs of the project. Customers should not be automatically forced to pay 100% of the costs of a project for which they do not receive the exclusive benefits simply because the project is located in the retail distribution service territory of their local utility.

Finally, the opponents argue that a benefit analysis should not be applied to BRPs because BRPs are “built to ensure compliance with the North American Electric Reliability Corporation’s (“NERC”) reliability criteria and utility local reliability requirements on a TO’s transmission system.”<sup>88</sup> In other words, the customers in the zone where BRP is physically located should pay

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<sup>85</sup> Request for Rehearing of PJM Transmission Owners, Docket No. EL15-95-003 filed Aug. 20, 2018 at 10.

<sup>86</sup> *Delaware PSC II*, 166 FERC ¶ 61,161 at PP 39-40.

<sup>87</sup> Southern Regulators Protest at 1.

<sup>88</sup> *Id.* at 13-14.

more because BRPs only benefit the utility not in compliance with NERC or local reliability requirements.<sup>89</sup> That argument fails on legal and practical grounds.

First, the argument ignores the interconnected nature of the transmission grid in the MISO footprint. There is no evidence that every BRP is needed solely as a result of local contributions to the reliability need.<sup>90</sup> This would, in fact, be inconsistent with the nature of BRPs and the foundation upon which they originated. As laid out in the Complaint, BRPs were presented “as Network Upgrades identified in the MTEP as required to ensure that the Transmission System is in compliance with applicable reliability requirements of NERC, regional reliability councils, or successor organizations, Transmission Owners planning criteria filed with federal, state, or local regulatory authorities, and applicable federal, state and local system planning and operating reliability criteria.”<sup>91</sup> There are a wide variety of drivers for BRPs.

While many BRPs, even most, may provide primarily local benefits when measured by LODF, that does not mean that all, or even most, BRPs are solely for local needs. As the MISO transmission owners noted in their Reply Comments to Order No. 1000

For planning purposes, the transmission grid is considered an integrated system and is planned as a whole. An RTO will engage in transmission planning in a manner that reflects its single-system regional operations in order to enhance the reliability and efficiency of its transmission and market operations.<sup>92</sup>

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<sup>89</sup> In his testimony, Mr. Austria states that the Challengers seem to “argue that the local utility somehow ‘owns’ the reliability violation – because the violation is on its system – and, therefore, that customers in that utility’s zone must be solely responsible for the costs. That simplistic analysis ignores the interconnected nature of the grid.” *Austria Responsive Testimony* at 10:8-11.

<sup>90</sup> Compare the Challengers’ assertions regarding a local focus on reliability with SPP’s assertion that “due to the realities of an integrated network and Commission policies such as Order No. 890, transmission system planning in SPP has evolved from a utility-by-utility approach focusing primarily on maintaining reliability at the local level to a region-wide approach.” *SPP Cost Allocation Order*, 131 FERC ¶ 61,252 at P 21.

<sup>91</sup> Complaint at 15-16 (quoting MISO BRP Transmittal Letter at 16).

<sup>92</sup> Midwest ISO Transmission Owners Reply Comments, Docket No. RM10-23-000 at 15 filed November 12, 2010 (arguing that incumbent utilities should keep a right of first refusal for all projects because of the interconnected nature of planning).

The transmission owners note that notwithstanding the different cost allocations, the MISO Tariff requires MISO to “develop the MTEP for expected use patterns and analyze the performance of the Transmission System in meeting both reliability needs and the needs of the competitive bulk power market, under a wide variety of contingency conditions.”<sup>93</sup>

MISO has explained that the projects were “referred to as ‘Baseline’ projects because they collectively, and together with the existing transmission grid facilities, define the base Transmission System needed to meet existing and forecast obligations.”<sup>94</sup> Given the interconnected nature of the MISO footprint, it is presumed that those BRPs with higher impacts to facilities outside the local zone are a reflection of larger contributions to the need for the projects, as well as greater benefits from compliance with NERC standards. In this regard, to assure itself that zones outside the zone where the project is physically located benefit when a utility builds a project to comply with NERC requirements, the Commission should look no further than the 2011 Southwest US blackout.<sup>95</sup> In addition, MISO has another category of projects that are purely local, Other Projects. For MISO’s MTEP19, MISO listed billions of dollars in “Other Projects” which include “projects driven by local reliability” – distinguishing exclusively local reliability projects from those needed to address NERC or other criteria. In short, when a utility fixes its NERC

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<sup>93</sup> *Id.* at 15-16, n.39 & n.42.

<sup>94</sup> MISO BRP Transmittal Letter at 16.

<sup>95</sup> See *Arizona-Southern California Outages on September 8, 2011, Causes and Recommendations*, Prepared by the Staffs of the Federal Energy Regulatory Commission and the North American Electric Reliability Corporation, April 2012, available at [https://www.nerc.com/pa/rrm/ea/September%202011%20Southwest%20Blackout%20Event%20Document%20L/AZOutage\\_Report\\_01MAY12.pdf](https://www.nerc.com/pa/rrm/ea/September%202011%20Southwest%20Blackout%20Event%20Document%20L/AZOutage_Report_01MAY12.pdf) (last accessed June 8, 2020). A three-phase fault in the Arizona Public Service (APS) territory led to the loss of APS’s Hassayampa-N. Gila 500 kV transmission line (H-NG). Because of the “new and increasing network interconnectivity in the electric industry,” *Mandatory Reliability Standards for Critical Infrastructure Protection*, 133 FERC ¶ 61,237, at P 14 (2010), loss of that line led to a cascading chain of events throughout the Southwest US and Mexico leaving over 2.5 million customers without service.

reliability problem, the Commission cannot presume that other utilities did not contribute to the problem or will not benefit.

Legally, even if it were true that “local” reliability was the driver for every BRP, the Commission must still look at the beneficiaries of the projects given the interconnected nature of the grid. In *ODEC*, the D.C. Circuit found that the Commission cannot exempt an entire class of projects from beneficiary determination merely because the actions of the local utility may have driven the project to be built, in that case meeting local planning criteria.<sup>96</sup> Here, there is not even a showing that exclusively local criteria drive BRPs so the argument is even more attenuated.

### **C. Challengers’ References To Order No. 1000 Are Irrelevant**

As they do with their other citations to supposed authority, the Challengers to the Complaint cite to Order No. 1000 out of context to assert that the Complaint cannot stand.

#### **1. The Issue In The Complaint Is Not Allocation Outside MISO**

The Challengers make much of the fact that the Commission did not require that costs be assigned outside the planning region to beneficiaries in adjacent regions to support their proposition that costs should not be allocated *within the planning region* to appropriate and similarly situated beneficiaries. These arguments are misplaced if not misleading. For example, the MISO transmission owners cite to the Commission’s determination that:

this Final Rule’s approach may lead to *some beneficiaries of transmission facilities escaping cost responsibility* because they are not located in the same transmission planning region as the transmission facility. Nonetheless, *the Commission finds this approach to be appropriate.*<sup>97</sup>

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<sup>96</sup> *ODEC*, 898 F.3d 1254 (“the cost-causation principle focuses on project benefits, not on how particular planning criteria were developed.”).

<sup>97</sup> MISO TO Protest at 6, n.18 (quoting *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at P 660) [emphasis in MISO TO Protest].

Although the MISO transmission owners may like the language they emphasized, the language they ignored makes the provision irrelevant to the Complaint.<sup>98</sup> The Complaint does not assert that consumers in the adjoining regions of Southwest Power Pool, Inc. (“SPP”), PJM, or Southeastern Regional Transmission Planning Process (“SERTP”) should pay for MISO BRPs. The Commission developed interregional planning to address those issues. However, for those within the MISO planning region, there is nothing in Order No. 1000 that suggests that similarly situated ratepayers should be treated differently based solely on location when they benefit from a new transmission facility. Indeed, just the opposite is true, as Order No. 1000 recognizes that the cost-causation principle is a pre-existing and generally applicable rule.<sup>99</sup> The Fifth Circuit Court of Appeals addressed this very issue, finding that the Commission had not justified a cost allocation scheme for WestConnect that allocated costs exclusively to public utilities in the planning region notwithstanding that non-jurisdictional utilities within the planning region benefit from the new facilities.<sup>100</sup> In remanding, the Court held that “FERC does not explain how it can meet its obligation to ensure just and reasonable rates by effectively assuring that many of the costs of new development will be imposed on only half of the utilities in the WestConnect region.”<sup>101</sup>

## **2. The Arguments Regarding ‘Local Projects’ Are Circular**

The references to Order No. 1000 and local cost allocation are merely circular arguments. Requiring exclusively local cost allocation is not the same as the local exclusion that the Commission addressed in Order No. 1000. While Order No. 1000 did not prohibit a transmission

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<sup>98</sup> The MISO transmission owners likewise provide selective highlighting in quoting *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at 628, ignoring the fact that the Commission’s finding related only to the request to allocate costs “involuntarily . . . to those within an adjacent planning region . . .” MISO TO Protest at 6, n.18.

<sup>99</sup> *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at P 504.

<sup>100</sup> *El Paso Electric Company v. Federal Energy Regulatory Commission*, 832 F.3d 495 (5<sup>th</sup> Circuit 2016).

<sup>101</sup> *Id.* at 505-06.

owner from “choosing to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that are not selected in a regional transmission plan for purposes of cost allocation,”<sup>102</sup> that “choice” is not what is at issue here. In MISO, these exclusively locally oriented projects that a transmission owner “chooses” to build are “Other Projects.”<sup>103</sup> BRPs are not Other Projects. For BRPs, the transmission owner has no choice but is directed to add the required transmission facility by MISO. BRPs are evaluated at the regional level and the project is selected in the regional plan; BRPs are not the result of a local planning decision merely “rolled-up” in the regional plan.<sup>104</sup> The issue here is a cost allocation methodology that demands that certain projects be allocated exclusively locally, prohibiting projects with regional benefits from being allocated regionally and thus prohibiting those projects from selection in the regional plan for cost allocation. As the Court in *ODEC* noted, Order No. 1000 did not change the cost causation precedent and could not force a regionally beneficial project to be allocated locally.<sup>105</sup> The Court held “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.”<sup>106</sup> Thus, nothing in

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<sup>102</sup> *Order No. 1000-A*, 139 FERC ¶ 61,132 at P 425.

<sup>103</sup> Other Projects represented more than \$2 billion in such transmission additions in MTEP19. The Complaint does not address the cost allocation for those projects, although as noted in the Complaint and Pterra Report, the same beneficiary arguments apply to some of those projects. That is another complaint for another day.

<sup>104</sup> MISO TO Protest at 26. *See also* Southern Regulators Protest at 11 (noting that “Order No. 1000 recognized the potential for local transmission facilities to be included in a regional transmission plan for informational purposes.”). This fact has nothing to do with BRPs which are not merely “included in the regional transmission plan for informational purposes” but instead are planned by MISO and meet national and regional reliability standards.

<sup>105</sup> *ODEC*, 898 F.3d at 1263 (“compliance with Order No. 1000 does not necessarily ensure compliance with the cost-causation principle—a pre-existing, more general rule that, in order to ensure just and reasonable rates, FERC must make some reasonable effort to match costs to benefits.”).

<sup>106</sup> *Id.*

Order No. 1000 changes the fundamental question as to whether the cost allocation for BRPs remains just and reasonable because it fails to allocate costs to beneficiaries.

### **3. Nothing In Order No. 1000 Exempted BRPs From Commission Review of Cost Allocation On A Project-by-Project Basis**

The assertion that “the Commission expressly determined in Order No. 1000 that the roughly commensurate standard does not depend on a project-by-project determination”<sup>107</sup> is egregiously misleading. The language cited was again taken out of context from a passage in the Order in which the Commission responded to a comment about its reference to “individually or in the aggregate” in the context of the cost allocation principles. Of course, the “public utility transmission providers in a transmission planning region may propose a cost allocation method that considers *the benefits and costs of a group of new transmission facilities*, although they are not required to do so.”<sup>108</sup> But the BRP cost allocation methodology is not a methodology “that considers the benefits and costs of a group of new transmission facilities,” in the aggregate and was never presented as such. Instead, the costs of each individual BRP are allocated on their own, both before the change in cost allocation and after. MISO supported the proposal to change cost allocation with aggregate information, but aggregate information about individual projects and individual cost allocation.

Thus, there is no relevance to this case for the Commission’s finding that

To the extent they propose a cost allocation method or methods *that considers the benefits and costs of a group of new transmission facilities*, and adequately support their proposal, Cost Allocation Principle 2 would not require a showing that *every individual transmission facility in the group* of transmission facilities provides benefits to every beneficiary allocated a share of costs *of that group of transmission facilities*. However, it is required that *the aggregate*

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<sup>107</sup> MISO TO Protest at 25.

<sup>108</sup> *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at P 627 [emphasis added].

*cost of these transmission facilities* be allocated roughly commensurate with aggregate benefits.<sup>109</sup>

That the MISO transmission owners felt the need to mischaracterize Order No. 1000 in this way demonstrates the weakness of their position and the fact that they recognize that the location-based cost allocation methodology cannot stand up to a project by project analysis.

**D. The Complaint Is Not Barred By The Doctrine Of Collateral Estoppel**

To overcome the lack of evidence to dispute that some number of BRPs have significant benefits beyond the zone in which they are located, the Challengers to the Complaint seek to prohibit the Commission from recognizing their factual deficiencies by arguing that the Complainants are barred from bringing the Complaint by the doctrine of collateral estoppel.<sup>110</sup> Anticipating such arguments, the Complaint (i) presents significant new evidence as to actual application of the location-based cost allocation methodology and (ii) demonstrates that the circumstances on which the Commission relied in the initial decision have changed. Any “preclusive effect of collateral estoppel ends when a party presents new evidence or a change in circumstances warrants reopening the issue.”<sup>111</sup>

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<sup>109</sup> *Id.* at P 641 [emphasis added]. It is not surprising that the Commission made this point with respect to Principle 2 as that Principle provides: “Those that receive no benefit from transmission facilities, either at present or in a likely future scenario, must not be involuntarily allocated any of the costs of those transmission facilities.” The Commission was merely clarifying that the “no benefit” test was different for a “group of transmission facilities” proposed in the aggregate. Because the Complaint is not about allocating costs to those “that receive no benefit,” the entire reference is misplaced.

<sup>110</sup> MISO Answer at 3, 18-26; Southern Regulators Protest at 21.

<sup>111</sup> *See American Electric Power Service Corp.*, 122 FERC ¶ 61,083, at P 70 (2008)(“AEP”)(citing in part, *San Diego Gas & Elec. Co. v. Pub. Serv. Co. of N.M.*, 86 FERC ¶ 61,253, at 61,912-13 (1999)(neither *res judicata* nor collateral estoppel barred litigation challenging a pre-existing rate because of a significant change in circumstances since that rate was approved)); *see also* Complaint at 23, n.58.

## 1. The Cited Caselaw Does Not Support MISO's Collateral Estoppel Argument

MISO cites two cases, *Southern*<sup>112</sup> and *PG&E*,<sup>113</sup> for the proposition that the “complaint violates the Commission’s policy against collateral attacks.”<sup>114</sup> Neither case supports dismissing the Complaint on the grounds of collateral estoppel.

The *Southern* case is factually distinguishable from the Complaint at hand. In *Southern* the complaining parties (Constellation and Energy Consulting Group (“ECG”)) sought to use proceedings – only one year after the original Commission Order – to change the Commission’s decision using arguments that could have been made when the Commission made its original decision. On October 17, 2008, the Southern Companies filed to amend their Market-Based Rate to establish Auction Rules under which the Southern Companies would “make available all uncommitted thermal resources on a day-ahead and hour ahead basis at cost-based offer prices established pursuant to the Auction Rules.”<sup>115</sup> Following notice of the filing by the Commission, Constellation and the ECG filed plain vanilla motion to intervene.<sup>116</sup> On December 18, 2008, the Commission issued an order conditionally accepting the tariff changes subject to condition, relevant here to allow third-party sellers to participate in the auction by December 19, 2009.<sup>117</sup> Neither Constellation nor ECG filed for rehearing. In October 2009, Southern made the Section 205 filing to implement the Commission requirement for third-party seller participation in the

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<sup>112</sup> *Southern Company Services, Inc.*, 129 FERC ¶ 61,253, at P 37 (2009)(“*Southern*”).

<sup>113</sup> *Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065 (2007)(“*PG&E*”).

<sup>114</sup> MISO Answer at 40.

<sup>115</sup> *See Southern Company Services, Inc., Proposed Amendment to Southern Companies' Market-Based Rate Tariff*, Docket No. ER09-88 filed on Oct. 17, 2008.

<sup>116</sup> *See Motion to Intervene of Constellation Energy Commodities Group, Inc., and Constellation New Energy, Inc.*, Docket No. ER09-88 filed Nov. 7, 2008; *see also Motion to Intervene Out of Time Energy Consulting Group LLC*, Docket No. ER09-88 filed on Nov. 26, 2008.

<sup>117</sup> *Southern*, 125 FERC ¶ 61,316 at PP 51-52.

auction effective December 19, 2009.<sup>118</sup> At that point, Constellation and ECG filed comments arguing that at the same time the Commission was acting on the tariff changes allowing for third-party participation, the Commission should also make fundamental changes in the previously accepted auction program.<sup>119</sup> In *Southern*, Constellation and ECG failed to explain why acting on the “expansion of the Auction to third-parties requires a re-examination of these previously-accepted provisions.”<sup>120</sup> Constellation and ECG merely filed their comments only a year after the initial Commission Order, asserting arguments that should have been filed in the earlier proceeding.

In contrast to the facts in *Southern*, Complainants here filed their Complaint under Section 206 of the Federal Power Act “which clearly permits challenges to the justness and reasonableness of existing rates.”<sup>121</sup> Further, Complainants did not file on the facts relied on in the original *BRP*

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<sup>118</sup> As Southern said, “As accepted by the Commission [on October 18, 2008], the Auction must expand to include third-party sellers by December 18, 2009. In the instant filing, Southern Companies tender revised tariff sheets to their Market-Based Rate Tariff to reflect their implementation of the expanded Auction, as well as certain related changes.” See *Southern Company Services, Inc.*, Docket No. ER09-88-003 filed on Oct. 19, 2009.

<sup>119</sup> See *Comments of Constellation Energy Commodities Group*, Docket No. ER09-88-000 filed on Nov. 9, 2009; *Motion to Intervene and Comments of Energy Consulting Group LLC*, Docket No. ER09-88-003 filed on Nov. 9, 2009. For example, Constellation sought to make four changes:

- (1) The Commission should require Southern to work with market participants in developing a methodology of calculating the Available Capacity based upon the industry standard average daily peak products rather than the peak hour.
- (2) The Commission should require Southern to add additional auction products available for non-peak times and days.
- (3) The Commission should require Southern to participate as a bidder in the DAE and HAE Auctions.
- (4) The Commission should require Southern to notify the winning bidders no later than 15 minutes prior to the close of the bid period for DAE auctions, and no later than 5 minutes prior to the close of the bid period for HAE auctions.

<sup>120</sup> *Id.* (The Commission also said, “that although Constellation and Energy Consulting had the opportunity to raise many of their concerns earlier in this proceeding, they did not.”).

<sup>121</sup> *Massachusetts Municipal Wholesale Electric Company v. Northeast Utilities Service Company*, 57 FERC ¶ 61,306 (1991)(“MMWEC”)(“Section 206 of the FPA clearly permits challenges to the justness and reasonableness of existing rates. Because various circumstances may change over time, rates which have been accepted for filing under Section 205 of the FPA later may be shown to be unjust and unreasonable. In

*Cost Allocation Order* but gathered evidence from the six plus years after the March 2013 *BRP Cost Allocation Order* approving the changes to the BRP cost allocation. In the January 2020 Complaint, Complainants provided substantial evidence showing that over this nearly seven-year period, allocating 100% BRP costs only to the zone where the project was physically located had not resulted in just and reasonable rates.

Not only does the *PG&E* case not support the MISO's collateral estoppel position, it further supports that the Complaint should not be dismissed on grounds of collateral estoppel. In *PG&E*, a party sought to re-litigate a rate design issue that had only recently been decided. The Commission dismissed the re-litigation because the party "failed to present the necessary new evidence or significant changed circumstances that would warrant our authorizing re-litigation of the standby rate design issue."<sup>122</sup> But the Commission made clear that the party was not "forever bar[red]"<sup>123</sup> from litigating the rate design issue if they presented the necessary new evidence or significant changed circumstances because "the preclusive effect of collateral estoppel ends when a party presents new evidence or a change in circumstances that warrants reopening the issue."<sup>124</sup> As explained in more detail below, Complainants both present new evidence and demonstrate a material change in circumstances.

## **2. The Facts Alleged In The Complaint Have Never Been Addressed By The Commission And Represent New Evidence**

In the instant case, the *BRP Cost Allocation Order* approving the location-based cost allocation relied on historical evidence to determine that it would be just and reasonable

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this regard, Section 206 operates to ensure that a utility's current rates are just and reasonable by permitting the Commission and others to challenge such current rates.").

<sup>122</sup> *PG&E*, 121 FERC ¶ 61,065 at P 43.

<sup>123</sup> *Id.* at P 42.

<sup>124</sup> *Id.* The Commission would further reiterate that point in *AEP*.

*prospectively* to allocate the costs of new BRPs based exclusively on location. As the Commission noted, in establishing a cost allocation methodology for future projects, the Commission need only “demonstrate that it has an articulable and plausible reason to believe that costs will be allocated at least roughly commensurate with benefits.”<sup>125</sup> While the Commission is entitled to rely on historical evidence to make such predictions, this does not preclude parties from establishing that the prediction or belief was inaccurate. In this regard, Complainants have not sought to re-litigate the original decision based on that historical evidence. Instead, Complainants brought forth evidence as to specific new projects, the costs of which were allocated exclusively to the zone in which they are located but for which the benefits are more expansive. The new evidence establishes that application of the location-based cost allocation methodology to these projects does not meet the Commission’s cost causation standards.<sup>126</sup> In doing so, the Complainants relied on the same benefit methodology – LODF – that the Commission used to make its prediction. Given that the projects addressed in the Complaint all arose after the Orders allowing a cost allocation change, the Commission has never previously reviewed the cost allocation for those projects and thus there is no collateral estoppel.

The Challengers to the Complaint also overstate the Commission’s determination in accepting the location-based BRP cost allocation. It is without question that the Commission reviewed historical evidence to surmise that prospectively it would be just and reasonable to allocate costs of BRPs exclusively to the zone where the project was located. The Commission made clear that its determination was based on “the particular circumstance presented by MISO in this proceeding . . . .”<sup>127</sup> The Seventh Circuit Court of Appeals upheld the Order because it believed

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<sup>125</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 521.

<sup>126</sup> *See Austria Responsive Testimony* at 3:15-17 (citing Attachment B of the Complaint).

<sup>127</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 520.

“FERC's calculations suggest that the spillover of benefits to other zones *is modest enough* to make the local allocation of costs ‘roughly commensurate’ with the allocation of benefits.”<sup>128</sup> There however is no evidence in the record of that proceeding, the Commission Orders, or the Seventh Circuit’s ruling upholding the Order, to suggest that the Commission affirmatively determined that allocating all of the costs of a BRP locally nevertheless meets the just and reasonable standard when 25%, 30%, 40% or more of the benefits are enjoyed by adjacent zones.

Of course, it not surprising that the Commission did not address specific project benefit percentages and specific cost allocation as the historical projects had not been allocated based solely on location – instead being allocated at least partially on LODF<sup>129</sup> – and the Commission had no way to predict the actual makeup of future projects. In addition, the Commission found “persuasive MISO's contention that, going forward, its MEP and MVP project categories will displace Baseline Reliability Projects when more efficient or cost-effective regional transmission solutions (*i.e.*, MEPs or MVPs) are available to meet multiple transmission needs.”<sup>130</sup> The Commission could have presumed that those BRPs that showed 25% or more benefit outside the zone in which they were located would be the BRPs displaced, although there is no legitimate dispute that “MISO’s contention”<sup>131</sup> has not come to pass.

The Pterra Report establishes that for a number of BRPs the benefits accruing to zones other than the zone where the projects are located are significant. The Pterra Report used the methodology that the Commission used to make its prediction that a location-based methodology

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<sup>128</sup> *Midwest ISO Transmission Owners*, 819 F.3d at 336 [emphasis added].

<sup>129</sup> As noted above, for BRPs that were 345 kV and above, 20% of the costs were allocated regional-wide on a load ratio share basis, recognizing the regional-wide reliability benefits of higher voltage projects.

<sup>130</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 521.

<sup>131</sup> *Id.* at P 519.

would meet its obligation to ensure just and reasonable rates.<sup>132</sup> The Commission has not ruled on the evidence presented nor the specific level of benefits accruing to adjacent zones.

### **3. Changed Circumstances Warrant Reviewing The Cost Allocation Methodology**

As described above, the Complaint is based on new evidence. As such, arguments of collateral estoppel are unavailing. Even so, there are also significant changed circumstances that would warrant review of the BRP cost allocation methodology even without new evidence.

#### **a) MVPs Do Not Provide A Regional Cost Allocation Methodology For Reliability Projects**

In the *BRP Cost Allocation Order* allowing the change in BRP cost allocation, the Commission made two findings that have turned out to be inaccurate. First, the Commission concluded that MISO was not required to have a regional cost allocation methodology for BRPs because “transmission projects with reliability benefits selected in the regional plan for purposes of cost allocation are covered by MVPs.”<sup>133</sup> Since the Commission’s *BRP Cost Allocation Order* in 2013, there has not been a single MVP approved.<sup>134</sup> This is true notwithstanding the regional benefits identified by the Pterra Report for multiple reliability projects.

MISO appropriately acknowledges that what it told the Commission in 2012 was that it “anticipated a ‘likelihood that multiple local transmission reliability issues could be addressed through regional solutions that are subject to some level of regional cost allocation, as either a MEP or a MVP.’”<sup>135</sup> Instead of acknowledging that the MVP category does not represent a viable

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<sup>132</sup> *Austria Responsive Testimony*, 6:7-9 (noting in his initial LODF analysis, Mr. Austria “used the MISO approach of aggregating negative distribution factors with other positive distribution factors.”).

<sup>133</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 519.

<sup>134</sup> Complaint at 31-32.

<sup>135</sup> MISO Answer at 24. MISO tries to downplay the statement by asserting that the Commission merely “referenced” MISO’s statement; instead the Commission relied on MISO’s “persuasive” statement in its holding.

substitute for appropriate regional cost allocation for reliability-based BRPs, MISO instead asserts that the group of MVP projects that were approved long before the change in cost allocation appropriately reflect the BRPs that would be displaced by MVPs and that the assertion remains valid.<sup>136</sup> The Commission recounted MISO's assertion in a different way in 2013, holding that "MISO explains that *its recent experience demonstrates that going forward*, with the introduction of MEPs and MVPs, many Baseline Reliability Projects will likely be displaced by projects that qualify for selection in the regional transmission plan for purposes of cost allocation as an MEP or MVP."<sup>137</sup> The Commission understood MISO's representation to be that its experience with the 2011 approval of an MVP portfolio, which was its only MVP experience and which would displace BRPs, was the new trend that would hold for the future and support the lack of a regional cost allocation methodology for reliability projects other than MVPs. Specifically the Commission held:

[t]hus, we find that MISO's Baseline Reliability Project Filing proposal to eliminate regional cost sharing for Baseline Reliability Projects is not inconsistent with the Order No. 1000 statement that a region may not designate a type of transmission facility that has no regional cost allocation method applied to it since transmission projects with reliability benefits selected in the regional plan for purposes of cost allocation are covered by MVPs.<sup>138</sup>

Interestingly, while offering lots of reasons why the predictions of displacement did not come to pass, or pretending that it did come to pass based on previously approved MVPs, neither MISO nor the other Challengers to the Complaint, are continuing to assert that MVPs will address reliability issues in sufficient numbers to constitute a broad regional cost allocation methodology for reliability projects. In fact, the MISO transmission owners assert that as "the MVPs became

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<sup>136</sup> *Id.* at 25.

<sup>137</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 524.

<sup>138</sup> *Id.* at P 519 (footnote omitted).

more subscribed and additional reliability issues were identified in later years, additional BRPs became necessary.”<sup>139</sup> Thus, it appears that far from MVPs operating as a viable regional cost allocation opportunity for reliability projects, as MISO asserted and the Commission found, the existence of the only tranche of MVPs led to “additional BRPs [becoming] necessary.”<sup>140</sup>

To ensure that the contention it found persuasive was an accurate prediction, the Commission required MISO to submit an informational filing following the completion of MTEP 2015 that outlines the number of MVPs, MEPs, and BRPs approved during the MTEP 2014 and MTEP 2015 cycles. The answer for those planning years, 0 MVPs and 1 MEP.<sup>141</sup> For the subsequent years of 2016-2019, MISO’s prediction did not fare any better with 0 MVPs and 2 MEPs.<sup>142</sup> This is to be compared with 507 BRPs during that period. Thus, with 507 BRPs and no MVPs, it can no longer be legitimately argued that the MVP category provides a regional cost allocation methodology for reliability projects. This exclusion is contrary to the requirements of Order No. 1000 and the assertions upon which the Commission found otherwise are of no import based on the facts established in the complaint.<sup>143</sup>

#### **b) Displacing BRPs Through MEPs Has Not Occurred**

In addition to relying on MISO’s displacement contention for the determination that reliability projects were covered for regional cost allocation by the MVP category, the Commission also relied upon the displacement assertion with respect to its finding that the location-based cost allocation methodology for BRPs was just and reasonable. Again, MISO’s contention was that

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<sup>139</sup> MISO TO Protest at 35.

<sup>140</sup> *Id.*

<sup>141</sup> *MISO 2017 Updated Informational Filing*, Docket Nos. ER13-186-000 and ER13-187-000 at 2.

<sup>142</sup> Complaint at 31-32.

<sup>143</sup> The Commission, correctly, held that only the MVP category offered a substitute for reliability projects from a regional cost allocation perspective as only the MVP category has a reliability component. *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 519.

“going forward, its MEP and MVP project categories will displace Baseline Reliability Projects when more efficient or cost-effective regional solutions (*i.e.*, MEPs or MVPs) are available to meet multiple transmission needs”<sup>144</sup> With only 3 MEPs and no MVPs, MISO’s “persuasive” contention is not true by any measure. MISO tries to downplay the Commission’s reliance on the contention by asserting that the Commission merely ‘referenced’ the statement. The Commission held: “MISO explains that *its recent experience demonstrates* that going forward, with the introduction of MEPs and MVPs, *many* Baseline Reliability Projects will likely be displaced by projects that qualify for selection in the regional transmission plan for purposes of cost allocation as an MEP or MVP.”<sup>145</sup> This is far more than a “reference.” The Commission twice held that it found MISO’s statements regarding displacement “persuasive.”<sup>146</sup>

In an effort to flip the Commission’s findings, based on MISO’s contentions, on their head, the MISO transmission owners misrepresent the MISO Tariff with respect to BRPs. Under the MISO Tariff, MISO is required to evaluate each BRP to determine whether it also provides economic (meeting certain thresholds) or public policy benefits.<sup>147</sup> If it does, then MISO must categorize the BRP as either a MEP or MVP and eligible for regional cost allocation. The MISO transmission owners argue that this means that only BRP with “no significant regional benefits” are categorized as BRP and allocated solely to the zone where the project is located.<sup>148</sup> The MISO transmission owners ignore, however, that the Complaint showed, using the same benefit metric

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<sup>144</sup> *Id.* at PP 519, 521, 524.

<sup>145</sup> *Id.* at P 524.

<sup>146</sup> *Id.* at P 519, 521.

<sup>147</sup> MISO Tariff, Attachment FF Section II.B. (MEP category) and Section III.A.2.j (a BRP that also meets the MEP criteria is categorized as a MEP).

<sup>148</sup> MISO TO Protest at 19.

they relied on to change the cost allocation, that there are BRPs that have significant “regional benefits” but that are allocated solely to the zone where the project is located.

The MISO transmission owners also oversimplify the requirements that a BRP must satisfy to qualify as a MEP or MVP and thus why there have only been three MEPs and zero MVPs since MISO’s erroneous prediction. Only BRPs over 345 kV that have Adjusted Production Cost Benefits that meet the MEP benefit to cost ratio may qualify as a MEPs.<sup>149</sup> Under the 345 voltage threshold for MEPs, none of the BRPs identified in the Pterra Report as having more than *de minimis* benefits to zones other than the zone where the BRP is physically located would qualify as MEPs.<sup>150</sup> The remaining three BRPs that are 345 kV clearly did not qualify as MEPs given they were classified by MISO as BRPs. This is unsurprising given that there have only been three MEPs approved since the cost allocation change.<sup>151</sup> Under MISO’s analysis in its 2017 Supplemental Informational Filing, 49 BRPs approved in the MTEP 14 and MTEP 15 would have qualified for cost-sharing because other zones benefit, not just the zone where the project is physically located.<sup>152</sup> Yet none of these BRPs that would have been cost-shared before, qualified as MEPs or MVPs.<sup>153</sup> Any claim that a BRP that has regional benefits will qualify as a MEP or MVP is illusory. The available evidence shows this is not the case.

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<sup>149</sup> MISO Tariff, Attachment FF Section II.B. (MEP category) and Section III.A.2.j (a BRP that also meets the MEP criteria is categorized as a MEP).

<sup>150</sup> See Complaint at 26-29.

<sup>151</sup> See *id.* at 31-32. As shown in the Complaint, MISO has approved almost 600 BRPs, 3 Market Efficiency Projects, 0 Multi-Value Projects, and over 1,900 Other Projects that MISO has approved between 2013-2019.

<sup>152</sup> See *MISO 2017 Updated Informational Filing* Docket Nos. ER13-186-000 and ER13-187-000 at 2.

<sup>153</sup> See *MISO Cost Allocation Reliability Safeguards*, presented to RECBWG May 16, 2018, at Slide 3 showing that of 10 “in-service” BRPs of 230 kV or more, none “that have been tested, have qualified for MEP cost allocation.” *available at* <https://cdn.misoenergy.org/20180516%20RECBWG%20Item%2004d%20Reliability%20Safeguards196868.pdf> (last accessed June 8, 200).

**c) The Challengers' Excuses For The Failure Of MEPs And MVPs To Displace BRPs Establish Changed Circumstances**

The Challengers to the Complaint argue both that there are no changed circumstances warranting a review of the BRP cost allocation methodology and that the review is not proper because “the Complainants ignore various intervening factors that occurred between 2013 and 2019” that explain why the foundation of the Commission’s Order has crumbled. In short, even if the Complaint had not established sufficient new evidence or changed circumstances, which it did, the Challengers have conceded changed circumstances that warrant a review of the BRP cost allocation ruling.

MISO focuses its initial excuse for why BRPs have not been displaced by MVPs and MEPs by asserting that “[o]ne such factor was the impact of the MISO South integration.”<sup>154</sup> MISO argues that the “increase in BRPs between 2013 and 2019 was almost exclusively due to the integration of the MISO South region.”<sup>155</sup> Of course, the fact that MISO South was integrating was known at the time MISO made its predictions as to the likely displacement of many BRPs by MEPs and MVPs as the integration from a planning perspective was addressed in the very same Order as the BRP cost allocation change. In fact, with the increase in BRPs from MISO South integration, if MISO’s prediction was correct there should have been increased displacements as well. MISO either misunderstood the impact of that integration and its effect on MISO’s prediction based on “recent experience”<sup>156</sup> or failed to convey the effect to the Commission for consideration in its decision-making. Either way, since MISO cites it as an “intervening factor” it warrants a

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<sup>154</sup> MISO Answer at 24; *see also* MISO TO Protest at 33-34.

<sup>155</sup> *Id.*

<sup>156</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215, at P 524.

review of the decision the Commission made in 2013 without knowing the impact of that intervening factor.

Although for its defense MISO focuses on the sheer numbers of BRPs, the fact that the increase in BRP numbers “was almost exclusively due to the integration of MISO South”<sup>157</sup> and that “the average number of BRPs in MISO North” fell compared to the pre-cost allocation change<sup>158</sup> is irrelevant. The focus of the Commission’s 2013 finding was the prediction of “many Baseline Reliability Projects . . . likely be[ing] displaced by projects that qualify for selection in the regional transmission plan for purposes of cost allocation as an MEP or MVP.”<sup>159</sup> There have been none.<sup>160</sup> MISO’s 2013 contention of “many” BRPs likely being displaced did not come true based on the facts, regardless of whether the analysis focuses on MISO South, MISO North, or both regions.

In trying to explain away the lack of “many” displacements MISO also notes:

declining natural gas prices and resource portfolio evolution from largely coal to natural gas and renewables has had an impact on the ability to cost-justify more MEPs, which are driven solely by production cost variations across the fleet. In MISO North, the near completion of all MVPs, in addition to mitigating potential BRP needs, has also helped eliminate significant system conditions that caused congestion that would justify additional MEPs.<sup>161</sup>

The MISO transmission owners also point to a lack of load growth and congestion to be addressed by MEPs. This fact may well explain why there have only been three MEPs. But the reasons are

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<sup>157</sup> MISO Answer at 24-25.

<sup>158</sup> *Id.*

<sup>159</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 524.

<sup>160</sup> While there were 3 MEPs approved in the intervening years, there is no evidence that those MEPs displaced any BRPs.

<sup>161</sup> MISO Answer at 25; *see also* MISO TO Protest at 37-38.

irrelevant. What is relevant is that the assertions on which the Commission relied in approving localized cost allocation for BRPs have not come to pass.

The MISO transmission owners assert “there is no expectation that an MEP or MVP be approved *simply to displace one or more BRPs when conditions do not warrant (i.e., when no MEP or MVP is identified that addresses the reliability need that the BRP is designed to address along with other transmission needs and satisfies the criteria to be classified as an MEP or an MVP.)*”<sup>162</sup> Of course that is true. But MISO asserted that “many” such BRPs would be displaced based on its “recent experience.” They relied on that assertion in allowing a change in cost allocation.

The MISO transmission owners actually attempt to eviscerate the substance of the Commission’s findings, asserting “[t]he Commission did not condition its decision on the number of BRPs *actually* declining, particularly when circumstances have not warranted the approval of multiple MEPs or MVPs, but instead was persuaded that, when MEPs and MVPs are warranted, they may displace one or more BRPs.”<sup>163</sup> The Commission may not have “conditioned” its *BRP Cost Allocation Order* on the number of BRPs “actually” declining but it unequivocally found persuasive the contention that based on recent experience many BRPs will likely be displaced.<sup>164</sup> The fact that this did not happen, because conditions did not warrant, is the point of raising in the Complaint the very low number of MEPs and MVPs that have actually been approved since 2013.

The MISO transmission owners’ comments suggest they never actually expected the displacement to happen notwithstanding their participation in the filing asserting that the displacement would likely occur. Regardless, the lack of *many* displacements represents changed

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<sup>162</sup> MISO TO Protest at 33 [emphasis added].

<sup>163</sup> *Id.* [emphasis in original].

<sup>164</sup> *BRP Cost Allocation Order*, 142 FERC ¶ 61,215 at P 524.

circumstance from those which the Commission found persuasive in the *BRP Cost Allocation Order*. In short, the facts have changed since MISO's contentions in 2013 that there would be many displacements. There have not been. While those changes may not be MISO's fault, or fault of the other Challengers to the Complaint, the changes have in fact occurred and the scenario the Commission relied on in 2013 to make its decision, both on the existence of a regional cost allocation methodology for reliability projects through MVPs and that many BRPs would be displaced by MEPs and MVPs, has not come to pass. The BRP cost allocation determination made in reliance on those "persuasive" contentions must be revisited.<sup>165</sup>

**E. Neither MISO Nor The Other Challengers To The Complaint Have Established That The Location-Based Cost Allocation Methodology Remains Just And Reasonable**

Having shown unequivocally that the assertions regarding the Pterra Report are unfounded and collateral estoppel does not prohibit the Complaint, Complainants turn now to the Challengers' assertions that the location-based cost allocation methodology remains just and reasonable. It does not.

**1. BRPs Are Not Exclusively Local Projects**

MISO, the MISO transmission owners, and the Southern Regulators argue that BRPs are local projects that address local reliability issues.<sup>166</sup> Their arguments, however, ignore that the transmission system in the MISO region is an interconnected grid that operates as a single unit. It is well-known that in an interconnected system, what happens in one area of the system will have

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<sup>165</sup> In an effort to dangle a hopeful carrot before the Commission, MISO asserts yet again that more MEPs are coming down the pike and that "it is reasonable to expect that more opportunities for identifying regionally beneficial MEPs will arise . . ." MISO Answer at 26. What it does not say, this time, is that those MEPs will displace BRPs. Regardless, the Commission has more than ample evidence that the wholesale displacement of BRPs is illusory.

<sup>166</sup> MISO Answer at 33-35; Webb Testimony at 10-11; MISO TO Protest at 10, 20; Southern Regulators Protest at 13.

some impact on the rest of the system.<sup>167</sup> Therefore, when MISO conducts its regional planning process, it studies the entire MISO transmission system to identify potential reliability violations and not individual zones in isolation from each other.<sup>168</sup> In its MTEP18 Report, MISO noted that it had “81 Baseline Reliability Projects (BRP) that are required to meet standards for both North American Electric Reliability Corporation (NERC) and regional reliability.”<sup>169</sup>

Notwithstanding the interconnected nature of the MISO grid, MISO and the MISO transmission owners would have the Commission believe that BRPs arise in isolation based on factors in a single zone and thus are only appropriately cost allocated to the zone in which they are located.<sup>170</sup> If BRPs were truly “local” projects, they would be planned by individual transmission owners and be categorized as “Other Projects.” The MISO’s Transmission Planning Business Practice Manual (“Transmission Planning Manual”) describes Other Projects as

local transmission projects that **address localized Transmission Issues** other than the reliability issues addressed by Baseline Reliability Projects, and thus other projects **are not projects used to address project violations of NERC and regional reliability standards.** Other projects may include projects to satisfy

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<sup>167</sup> See, e.g. *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at PP 10, 534 (discussing how the interconnected nature of the transmission system creates opportunities for free ridership because a transmission owner cannot withhold service from those who benefit but do not pay); see also generally, *Austria Responsive Testimony* at 9:10-11:8 and specifically 10:24-11:4 (“it is incorrect to imply that the beneficiary of a BRP is the location of the reliability violation, first, because the violation is not due to the affected facilities but rather to changes in system use that can occur elsewhere, and, second, because the solution introduces flow changes that propagate in accordance with the impedance characteristics of interconnected transmission facilities regardless of whether these are local or not.”).

<sup>168</sup> MISO Tariff at Attachment FF Section II.A.1.

<sup>169</sup> MTEP18 Report, at 4, available at <https://cdn.misoenergy.org/MTEP18%20Full%20Report264900.pdf>.

<sup>170</sup> Review of MISO’s role in the Northeast Blackout belies this silo approach to reliability. NERC, Technical Analysis of the August 14, 2003, Blackout: What Happened, Why, and What Did We Learn?, Report to the NERC Board of Trustees by the NERC Steering Group at 2 (July 13, 2004)(noting that one of the causes of the 2003 Northeast blackout, a blackout affecting three NERC regions in the northeastern portion of the Eastern Interconnection, was (i) that coordination between the MISO and PJM reliability coordinators was ineffective and (ii) the MISO, as reliability coordinator, did not provide adequate diagnostic support (MISO used non-real-time information to monitor real-time operations in its area of responsibility and did not have real-time topology information for critical lines mapped into its state estimator.).

Transmission Owner and/or state and local planning criteria **other than NERC or regional reliability standards . . .**<sup>171</sup>

Meanwhile the Transmission Planning Manual describes BRPs as “transmission projects needed to comply with Electric Reliability Organization (i.e., NERC) reliability standards and regional reliability standards.”<sup>172</sup> The key distinction here is that BRPs address reliability that may be on an individual transmission owner system but which have the potential to impact regional reliability,<sup>173</sup> such as NERC and regional reliability standards that ensure that the transmission system operates reliably, while Other Projects address “localized Transmission Issues.”

Furthermore, it also cannot be said that *only* the local zone benefits when the violation is addressed. Again, because the transmission system is interconnected, if a transmission facility is suddenly unavailable in one zone, it will impact the interconnected transmission system.<sup>174</sup> The prevention of a reliability violation benefits the interconnected transmission system. The question then is how wide the benefits of a new BRP flow. The LODF analysis answers that question.<sup>175</sup>

The question is not new. MISO stakeholders grappled with these same issues almost 15 years ago, when MISO first developed and proposed the BRP category. MISO proposed the BRP category as part of its overall effort to develop a cost allocation policy for transmission facilities “that better reflects the shared and interconnected use of the transmission grid.”<sup>176</sup> Following an initial order that (i) approved the BRP category and cost allocation method for BRPs operating

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<sup>171</sup> Transmission Planning Business Practice Manual 20 at 2.3.2.1. [emphasis added].

<sup>172</sup> *Id.* at 2.3.2.2.

<sup>173</sup> The Commission has referred to BRPs as “regional” in other proceedings. For instance, in an incentives case, the Commission stated that a finding by MISO that a project is a BRP means that MISO “has found it to be necessary for *regional* grid reliability.” *Southern Indiana Gas & Elect. Co.*, 125 FERC ¶ 61,124, at P 6 (2008)(emphasis added).

<sup>174</sup> *See supra* note 78.

<sup>175</sup> *See generally Austria Responsive Testimony* at 9:10-11:8 (noting the local utility did not cause the reliability violation and that other zones benefit from the violation being corrected).

<sup>176</sup> MISO BRP Transmittal, ER06-18-000 at 4 (filed on Oct. 7, 2005).

between 100 kV-344 kV but (ii) rejecting cost allocation method for BRPs operating at or above 345 kV,<sup>177</sup> the Commission held a technical conference to discuss the percentage of costs of BRPs operating at or above 345 kV that are spread throughout the entire MISO region and the percentage allocated using the LODF method.<sup>178</sup> The discussion during the technical conference provides useful background information on the regional nature of BRPs and MISO and stakeholders' struggles to develop a cost allocation method for BRPs.

According to witnesses, one option considered but rejected, was to divide MISO into three or four subzones because stakeholders struggled with where to draw the boundaries of the subzones.<sup>179</sup> Instead, stakeholders preferred using the LODF analysis because it would allow MISO to create "floating zones" based on the actual impact of a BRP.<sup>180</sup> Mr. Moeller, Vice President of Transmission Asset Management, Midwest ISO, explained at the time:

Essentially what happens is, as you look at the transmission system and add an element, it changes the electrical characteristics of the system. The load outage distribution factor is an assessment of how big the circle is that you've changed the electrical characteristics. So, if it's a very large project in terms of its size, it will have a large footprint that it impacts. If it's a short, small project, it's likely to have a small impact.<sup>181</sup>

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<sup>177</sup> *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 at P 121.

<sup>178</sup> *In The Matter Of: Cost Allocation Methodology for High Voltage Baseline Reliability Projects In The Midwest ISO Region*, Technical Conference Transcript, Docket No. Er06-18-000 (Apr. 21, 2006)("Technical Conference Transcript").

<sup>179</sup> *Id.* at 30:15-24.

<sup>180</sup> *Id.* at 37:8-16 (Mr. Moeller, Vice President of Transmission Asset Management, Midwest ISO, explained that, "Essentially what happens is, as you look at the transmission system and add an element, it changes the electrical characteristics of the system. The load outage distribution factor is an assessment of how big the circle is that you've changed the electrical characteristics. So, if it's a very large project in terms of its size, it will have a large footprint that it impacts. If it's a short, small project, it's likely to have a small impact.").

<sup>181</sup> *Id.*

Depending on the characteristics of a particular BRP, that impact may be large or small, but the LODF analysis gives MISO a tangible basis to identify which zones are impacted and by how much and to allocate costs accordingly.<sup>182</sup>

It is clear from this discussion that BRPs were considered to be regional, not local, projects. As one witness explained, the BRP category included a 100 kV voltage threshold because “[I]ines lower than 100 KV [sic] were not seen to produce regional benefits.”<sup>183</sup> If BRPs were originally considered “local” projects with no benefits to the MISO region, then the cost allocation issue would have been an easy one. Instead it took stakeholders over 18 months to develop a proposed cost allocation method that recognizes that BRPs have benefits outside the zone where they are located.

The 2013 cost allocation change did not change the nature of BRPs. As they do throughout their opposition to the complaint, in 2012 MISO and the MISO transmission owners simply argued that the “primary” benefit was local while contending that many BRPs with regional benefits would be displaced. The Complaint does not seek regional cost allocation for BRPs that are shown by LODF to have only local impacts. LODF would allocate all the costs for those projects locally. But LODF shows that a number of projects have significant benefits outside the zone where the project is physically located. Complainants offer no proof that those projects do not have such regional benefits, they simply return to their arguments about most other BRPs. In this regard, not a single party has actually submitted proof that counters the proof in the Complaint regarding projects that have benefits outside their zone, but which are being allocated locally.

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<sup>182</sup> *Id.*

<sup>183</sup> *Id.* at 34:9-11.

## 2. The MEP Orders Support The Assertion That When Benefits Can Be Measured Costs Should Not Be Allocated Through Non-Measurement Location-Based Cost Allocation Methodologies

MISO transmission owners claim that Complainants misinterpret the Commission’s recent rejection of a proposed cost allocation method for what MISO deemed “Local Economic Projects” with only local economic benefits, but, as the Commission found, were economic projects with regional benefits.<sup>184</sup> The MISO transmission owners argue that while the Commission rejected the cost allocation for Local Economic Projects, the Commission only did so because Local Economic Project had to pass a regional benefits test, and thus because presumably other zones benefitted, those benefits should be reflected in the cost allocation. The language of the Orders suggests that it is not Complainants that are misguided.

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. In the *MEP First Rejection*, the Commission said:

In this case, Filing Parties do not contend that they are unable to calculate the distribution of benefits for Local Economic Projects with the same granularity as Market Efficiency Projects. Instead, Filing Parties’ proposal suggests the opposite conclusion – that, if MISO implements the proposed benefits metrics, it will be able to more precisely calculate the distribution of benefits. In fact, Filing Parties state that their proposal to use two new benefit metrics will “improve the alignment of costs and benefits by further identifying benefits and beneficiaries, allowing for a more granular allocation of costs.” Thus, every time MISO approves a Local Economic Project in its MTEP, it will first identify all benefitting zones in the same manner it does for Market Efficiency Projects.<sup>185</sup>

The Commission then said that the cost allocation must reflect the benefits easily calculated.

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<sup>184</sup> *MEP First Rejection Order*, 167 FERC ¶ 61,258; *Midcontinent Indep. Sys. Oper., Inc.*, 170 FERC ¶ 61,241, at P 59 (2020)(“MEP Second Rejection Order”).

<sup>185</sup> *MEP First Rejection Order*, 167 FERC ¶ 61,258 at P 62.

Consequently, we find that Filing Parties' proposed Local Economic Project cost allocation is at odds with its simultaneous proposal to improve the project benefit metrics. That is, Filing Parties have proposed metrics that will identify regional benefits for Local Economic Projects, but, for the purpose of imposing its preferred cost allocation method, Filing Parties will ignore the results of its regional benefit metrics analysis in order to allocate the costs only to the Transmission Pricing Zone(s) where the project is located. This combination of elements within the proposal therefore is inconsistent with the cost-causation principle.<sup>186</sup>

In the *MEP Second Rejection*, the Commission reiterated that because the beneficiaries could be identified, the cost allocation must be based on identified beneficiaries. The Commission rejected the Filing Parties' proposal because while the benefit metrics they proposed to apply to MEPs "will allow for more precise cost allocation to benefitting loads because more benefits will be considered both in determining beneficial projects and calculating the magnitude of benefits to beneficiaries," the Filing Parties would apply "the same benefit metrics in a more selective and incomplete manner with regard to Local Economic Projects."<sup>187</sup> Specifically the proposed cost allocation method for the Local Economic Projects did not track the beneficiaries identified with the enhanced, more precise metrics. As the Commission concluded:

Among other things, the proposed cost allocation method inappropriately relies on a benefits metric, the MISO-SPP Settlement Agreement metric, that determines benefits outside of the local Transmission Pricing Zone where the Local Economic Project is located, but then disregards these benefits by allocating costs for the project solely within that Transmission Pricing Zone.<sup>188</sup>

Here, MISO and the MISO transmission owners relied on LODF to argue that the benefits of BRPs are primarily local, but when the LODF methodology shows a different result they ask that the Commission reject it in favor of a location-based methodology that ignores the measured

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<sup>186</sup> *Id.* at P 63.

<sup>187</sup> *MEP Second Rejection Order*, 170 FERC ¶ 61,241 at P 66.

<sup>188</sup> *Id.* at P 59.

benefits. As the Complaint shows, MISO can easily identify the beneficiaries of BRP projects using the LODF analysis. This is not a situation where MISO cannot calculate the benefits of BRPs and therefore must fall back to an assumption that only the zone where the project is located benefits.<sup>189</sup> MISO and the MISO transmission owners simply prefer not to identify those beneficiaries, a position that does not pass muster under the case law.<sup>190</sup> And MISO and the MISO transmission owners never hid the fact that they do not want to accurately identify beneficiaries because to do so may result in BRPs being subject to Order No. 1000 competition.

Thus, consistent with the *MEP Rejection Orders* (and Commission and court precedent), the Commission should grant the Complaint, require the MISO to identify the beneficiaries using the easily applied LODF methodology and then allocate the costs based on the beneficiaries identified.

### **3. The Challengers' Attempts To Distinguish Recent Decisions Are Unavailing**

MISO,<sup>191</sup> the MISO transmission owners,<sup>192</sup> and the Southern Regulators<sup>193</sup> each argue that the recent decisions referenced in the Complaint do not support the Commission addressing the BRP cost allocation methodology that demands local cost allocation and prohibits regional allocation regardless of benefits. Critically, those decisions cited in the Complaint support the

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<sup>189</sup> *Western Massachusetts Electric Co. v FERC*, 165 F. 3d 922, 927 (D.C. Cir. 1999)(“accepting allocation of costs of costs on a system wide basis, in part, because to identify beneficiaries to allocate costs required a level of precision that would be difficult to achieve”); *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 5 (D.C. Cir. 2002)(rejecting allocation of refunds because cost causation principles because while feasible concerns play a role in approving rates, “FERC must provide more than a cursory response to infeasibility”).

<sup>190</sup> *Illinois Commerce Comm' v. FERC*, 576 F.3d 470, 476-477 (7th Cir. 2009)(rejecting cost allocation because FERC did not support that “the difficulty exceeds that of measuring the benefits to particular utilities of a smaller capacity transmission line”).

<sup>191</sup> MISO Answer at 29-33.

<sup>192</sup> MISO TO Protest at 21-25, 28-30.

<sup>193</sup> Southern Regulators Protest at 8-11.

proposition that costs must be allocated in a manner that is roughly commensurate with benefits. The efforts to distinguish those decisions from the BRP cost allocation methodology – which does not always allocate project costs in a manner that is roughly commensurate with benefits – are misguided.

**a) ODEC v. FERC**

Although the MISO transmission owners spill much ink in their attempt to limit the applicability of *Old Dominion Electric Cooperative v. FERC*,<sup>194</sup> nothing in their Protest does so. They state numerous times that the Court’s finding in *ODEC* is limited to finding the Commission’s decision arbitrary and capricious because the Commission did not justify denying cost sharing for transmission facilities known to have regional benefits.<sup>195</sup> BRPs are known to have regional benefits. As discussed in the Complaint, when the BRP cost allocation was first approved, BRPs above 345 kV had a 20% allocation across MISO because of the regional benefits of such projects. The Commission actually questioned whether that allocation was too low for the regional benefits of such projects. Numerous lower voltage BRPs were cost shared also. Thus, there is no question that some BRPs are *known* to have regional benefits.

The *ODEC* Court started its analysis by applying the cost causation principle to find that denying cost sharing *for an entire category* of transmission facilities *that includes* transmission facilities known to have regional benefits was improper, before asking whether the Commission had justified its decision.<sup>196</sup> The Court held that the cost causation principle “prevents regionally beneficial projects from being arbitrarily excluded from cost sharing – a necessary corollary to

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<sup>194</sup> 898 F.3d 1254.

<sup>195</sup> MISO TO Protest at 21, 24.

<sup>196</sup> *ODEC*, 898 F.3d 1254 at 1261.

ensuring that the costs of such projects are allocated commensurate with their benefits.”<sup>197</sup> The current cost allocation method denies cost sharing for *all* BRPs, even though there are undeniably BRPs that have regional benefits that MISO can easily calculate.

In attempting to distinguish *ODEC* by focusing on any perceived differences between BRPs and the transmission facilities at issue in *ODEC*, the MISO transmission owners miss the key holding of *ODEC*. The problem in *ODEC*, and here, is that an entire category of projects is excluded from potential regional cost allocation when evidence currently before the Commission proves that there are BRPs that have regional benefits. In *ODEC* the Court found the application of the cost causation principle simple because the specific projects before the Court included high voltage projects, projects known to have regional benefits.<sup>198</sup> Here, the Pterra Report provided substantial evidence that there are BRPs with a range of voltages that have more than *de minimis* benefits to zones other than the zone where the project is located, thus regional benefits. For **seven** of the BRPs analyzed, the zone where the BRP was located was allocated **all** the costs of the project but received **less than half the benefits**.<sup>199</sup> As in *ODEC*, this result involves a wholesale departure from the cost-causation principle for certain BRPs. The Commission recently applied the *ODEC* decision in its finding that MISO and the MISO transmission owners’ proposed cost allocation for a new category of projects, “Local Reliability Projects,” violated the cost causation principle. In the order, the Commission rejected arguments that *ODEC* was inapplicable on the basis that *ODEC*

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<sup>197</sup> *Id.*

<sup>198</sup> *Id.* (“Application of the cost-causation principle is simple here, because this critical point is undisputed: high-voltage power lines produce significant benefits within the PJM network, yet the amendment categorically prohibits any cost sharing for high-voltage projects like those at issue here.”).

<sup>199</sup> *See* Complaint at 26-29. A chart provided in the Complaint highlight seven projects that were allocated solely to the zone where the project is located but the zone received less than half the benefits of the project.

involved high-voltage projects while MISO and the MISO transmission owners' proposal involved projects operating between 100 kV and below 230 kV.<sup>200</sup>

Part of the MISO transmission owners' argument is that *ODEC* does not require a project-by-project analysis. This assertion is confusing given the fact that the Court analyzed the application of the cost allocation method to two specific projects. Two of the proceedings under review involved the application of the new cost allocation method to two specific projects, the Elmont-Cunningham project and the Cunningham-Dooms project.<sup>201</sup> The Court compared the benefits Dominion was expected to receive under the previous cost allocation method, 47% from the Elmont-Cunningham project and 43% from the Cunningham-Dooms project, to the costs it would be allocated under new cost allocation method, 100% for both projects, and concluded that it resulted in "a wholesale departure from the cost-causation principle" and set aside the two orders applying the cost allocation.<sup>202</sup>

Finally, the MISO transmission owners argue that Complainants' interpretation of *ODEC* would create a circuit split between the D.C. Circuit's decision in *ODEC* and the 7<sup>th</sup> Circuit's decision to accept the prospective cost allocation in *MISO Transmission Owners*.<sup>203</sup> This might be true if the Complaint relied on the same evidence the 7<sup>th</sup> Circuit had before it. But as explained throughout this answer, Complainants have presented evidence based on the past seven years that the current cost allocation method fails to allocate to the beneficiaries the costs of regionally beneficial BRPs consistent with the cost causation principle. The Seventh Circuit addressed only whether the Commission's prediction that the allocation methodology would produce a just and

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<sup>200</sup> *MEP First Rejection Order.*, 167 FERC ¶ 61,258 at P 64.

<sup>201</sup> *ODEC*, 898 F.3d 1261.

<sup>202</sup> *Id.*

<sup>203</sup> MISO TO Protest at 27, n.65.

reasonable cost allocation methodology was arbitrary and in concluding that it was not relied on the Commission's determination that the spill-over of benefits would be minor and that any BRPs with regional benefits would receive regional cost allocation in other categories. Neither prediction, although not arbitrarily arrived at, was correct. There is no support for the assertion that applying *ODEC* to the facts before the Commission today would result in a circuit split based on the totality of Seventh Circuit rulings on cost causation or the specific decision in *MISO Transmission Owners*.

**b) Del. PSC., et al. v PJM (the Artificial Island Proceedings)<sup>204</sup>**

The MISO transmission owners argue that the Artificial Island proceedings “contradict Complainants’ arguments that BRP costs must be allocated more broadly outside of the zone with the reliability issue in order to be just and reasonable.”<sup>205</sup> In a similar vein, the Southern Regulators argue that the Complainants use the Artificial Island proceedings to argue that the costs of reliability projects must be regionally allocated among all system beneficiaries.<sup>206</sup> The MISO transmission owners and the Southern Regulators misconstrue both how the Complainants utilized the precedent in the Artificial Island proceedings to support their Complaint and the precedent itself.

The Complainants did not invoke the Artificial Island precedent to advance an argument about the need to ensure regional cost allocation instead of local cost allocation or the absolute need to regionally allocate costs among all beneficiaries for all BRPs. Instead, the Complainants utilized the Artificial Island precedent to emphasize the importance of ensuring that a cost allocation methodology appropriately identifies beneficiaries, and allocates costs accordingly, for

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<sup>204</sup> *Delaware PSC I*, 164 FERC ¶ 61,035; *Delaware PSC II*, 166 FERC ¶ 61,161.

<sup>205</sup> MISO TOs Protest at 30.

<sup>206</sup> Southern Regulators Protest at 10-11.

all projects. The Complainants explained that, in the Artificial Island proceedings, the Commission found that the beneficiaries of a specific project at issue, a 230-kV stability-based reliability project known as the Artificial Island project, were not captured by the application of the approved region-wide cost allocation methodology (the solution-based DFAX methodology), thereby rendering the solution-based DFAX methodology unjust and unreasonable as applied to the Artificial Island project and similar stability-based reliability projects.<sup>207</sup>

After developing an extensive technical record, the Commission determined that the stability-related reliability issues to be addressed by the Artificial Island project are analytically unique compared to voltage or thermal overload problems that are addressed by the solution-based DFAX method.<sup>208</sup> The Commission found that a different methodology, the Stability Deviation Method, allocates costs to those zones that benefit from the improved stability performance created by stability-driven transmission projects.<sup>209</sup> Specifically, the Stability Deviation Method identifies beneficiaries of projects addressing stability-related reliability issues by modeling the transient voltage angular deviation at each PJM substation to assess the stability performance of the generator(s) to critical faults, and then allocates costs based on a load-weighted deviation for each affected zone.<sup>210</sup> The Stability Deviation Method directly evaluates the impact of the stability-related reliability issue on the affected transmission zone when identifying beneficiaries of the project for purposes of cost allocation.<sup>211</sup>

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<sup>207</sup> See Complaint at 6 (citing *Delaware PSC I*, 164 FERC ¶ 61,035, at P 41).

<sup>208</sup> *Delaware PSC I*, at P 38; *Delaware PSC II*, at PP 15, 38, 44.

<sup>209</sup> *Delaware PSC II*, at P 46.

<sup>210</sup> *Delaware PSC I*, at P 25; *Delaware PSC II*, at P 13, 39.

<sup>211</sup> See *Delaware PSC II*, at P 13.

Just like the Commission found that the Stability Deviation Method appropriately identifies beneficiaries and allocates costs for stability-based reliability projects in PJM than does solution-based DFAX, the LODF methodology better identifies beneficiaries and allocates costs for BRPs in MISO than the current approach that automatically assumes benefits exclusively to a single zone without conducting any underlying beneficiary analysis.

MISO argues that the Artificial Island Project proceedings “can be easily distinguished”<sup>212</sup> because the underlying Complaint here “bears no resemblance to the Artificial Island proceedings.”<sup>213</sup> MISO then contends that the Complainants are using the Artificial Island proceedings to improperly collaterally attack the current BRP cost allocation methodology.<sup>214</sup>

Complainants do not cite to the Artificial Island cases to collaterally attack the current BRP methodology. Complainants are applying the legal precedent from the Artificial Island proceedings to argue that the current BRP cost allocation methodology is unjust and unreasonable.<sup>215</sup> Complainants recognize that the Artificial Island proceedings involved a different and unique category of transmission upgrades intended to resolve generator stability issues. The Complainants do not argue that the Artificial Island project is factually analogous to any baseline reliability project. Rather, the Artificial Island precedent supports the Complainants’ contention that a cost allocation methodology must appropriately identify beneficiaries and allocate costs in a manner that is roughly commensurate with benefits for all projects, not just a majority of them.<sup>216</sup>

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<sup>212</sup> MISO Answer at 30.

<sup>213</sup> MISO Answer at 32.

<sup>214</sup> *See* MISO Answer at 30.

<sup>215</sup> *See* Complaint at 1-2.

<sup>216</sup> *See id.* at 6 (citing *Delaware PSC I*, at P 41).

Finally, the MISO transmission owners attempt to suggest that the Commission's determination related to the Artificial Island cost allocation is similar to the BRP location-based methodology based on an assertion 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."<sup>217</sup> While the Commission did move away from PJM's flow-based methodology for the stability related reliability project at issue,<sup>218</sup> unlike the BRP location-based cost allocation, the Commission did not restrict the cost allocation exclusively to the zone in which the reliability issue arose. Instead, the Stability Deviation Method directly measures the impact of the stability-related reliability issue on the affected transmission zone to determine the appropriate cost allocation. The result of that analysis was allocation of costs for the Artificial Island reliability project across multiple zones, not simply the zone where the reliability problem manifested itself.

The Challengers' attempts to discredit the relevant and guiding cost causation precedent in the Artificial Island Proceedings are unavailing.

#### **4. Challengers Seek To Distract The Commission From Reviewing The BRP Cost Allocation By Raising Miscellaneous Assertions That Lack Merit**

In their effort to distract the Commission from the fact that they did not actually address whether the projects identified in the Complaint have benefits outside the zone of cost allocation, the Challengers to the Complaint raise a number of red herring or extraneous arguments. Each reflects the deficiency of their response to the substance of the Complaint.

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<sup>217</sup> MISO TOs Protest at 29.

<sup>218</sup> The MISO transmission owners' assertion that the case related to "an entire category" (MISO TOs Protest at 28) of projects, is divorced from fact. The Artificial Island project was a reliability upgrade in PJM. PJM does not have multiple categories of reliability upgrades based on the driver, just as MISO does not have multiple categories of BRP based on the reliability driver. The case did not change that fact.

a) **The Commission Must Reject Efforts To Relitigate Order No. 1000’s Decision Not To Exclude Reliability Projects From Competition**

Order No. 1000 required transmission providers to remove from their tariffs rights of first refusal that grant transmission owners the right to build transmission projects that have benefits outside the zone where the project is physically located, *i.e.* regional projects.<sup>219</sup> The Commission found that “federal rights of first refusal in favor of incumbent transmission providers deprive customers of the benefits of competition in transmission development, and associated potential savings . . .”<sup>220</sup> and have the “ability to discourage innovation.”<sup>221</sup> The requirement applied equally to regional projects driven by reliability needs and those driven by economic or public policy requirements.<sup>222</sup>

Through this package of reforms, the Commission seeks to ensure that each public utility transmission provider will work within its transmission planning region to create a regional transmission plan that identifies transmission facilities needed to meet reliability, economic and Public Policy Requirements, including fair consideration of lines proposed by nonincumbents, with cost allocation mechanisms in place to facilitate lines moving from planning to development.<sup>223</sup>

In its protest, the ITC Companies attempt to relitigate the Commission’s decision to require reliability projects to be subject to competition using arguments similar to those the Commission already rejected in the Order No. 1000 rulemaking proceeding, namely that because BRPs are reliability projects, they should be exempt from competition.<sup>224</sup> The Commission rejected

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<sup>219</sup> *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at P 313.

<sup>220</sup> *Id.* at P 285.

<sup>221</sup> *Order No. 1000-A*, 139 FERC ¶ 61,132 at P 82.

<sup>222</sup> *Id.* at PP 85, 428 (rejecting arguments that reliability projects should be exempt from the requirement).

<sup>223</sup> *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at P 47

<sup>224</sup> ITC Companies Protest at 4.

variations of this argument throughout the Order No. 1000 rulemaking proceeding.<sup>225</sup> The D.C. Circuit in *South Carolina Public Service Authority v. FERC* upheld the Commission’s decision to reject arguments that eliminating a right of first refusal for reliability projects would, among other things, lead to a “reduction in transmission system reliability.”<sup>226</sup> The ITC Companies have not provided any new evidence that would warrant the Commission reversing course to exempt reliability projects from competition.

The ITC Companies and Southern Regulators also look for support in the Commission’s approval of an exemption for certain reliability projects needed in three years or less.<sup>227</sup> They both overlook, however, that the Commission approved a *limited* exception, not one meant to exclude from competition the entire category of reliability projects as the ITC Companies and Southern Regulators argue in their protests. While the Commission agreed that there may be “reliability needs that are too immediate to accommodate a competitive solicitation . . .,”<sup>228</sup> it found that any “exception should only be used in certain *limited* circumstances . . .”<sup>229</sup> The Commission also rejected ISO New England Inc.’s (“ISO-NE”) proposal to exempt from competition reliability projects needed in five years or less because historical analysis showed that would have exempted 42 out of 48 previously approved reliability.<sup>230</sup> The Commission held that “application of a five year right of first refusal in this instance would effectively preclude the benefits of competition in

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<sup>225</sup> See, e.g., *Order No. 1000-A*, 139 FERC ¶ 61,132 at PP 85, 428.

<sup>226</sup> 762 F.3d at 78.

<sup>227</sup> ITC Companies Protest at 3; Southern Regulators Protest at 14-16.

<sup>228</sup> *PJM Interconnection, L.L.C.*, 142 FERC ¶ 61,214, at P 254 (2013), *order on reh’g & compliance*, 147 FERC ¶ 61,128 (2014) (PJM Second Compliance Order), *order on reh’g & compliance*, 150 FERC ¶ 61,038, *order on reh’g and compliance*, 151 FERC ¶ 61,250 (2015).

<sup>229</sup> *Id.* at P 248 [emphasis added]. Hence the Commission adopted five criteria to “ensure that an exception from the requirement to eliminate a federal right of first refusal for reliability projects will be used in *limited* circumstances.” *Id.* [emphasis added].

<sup>230</sup> *ISO New England Inc.*, 143 FERC ¶ 61,150, at P 237 (2013), *order on reh’g & compliance*, 150 FERC ¶ 61,209, *order on reh’g & compliance*, 153 FERC ¶ 61,012 (2015).

selecting the more efficient or cost-effective projects.”<sup>231</sup> In addition, the Commission opened an investigation into whether ISO-NE, PJM, and SPP are “implementing the exemption in a manner that is inconsistent with or more expansive than what the Commission directed, and therefore [are] unjust and unreasonable, unduly preferential or discriminatory.”<sup>232</sup> Taken together, nothing in the Commission’s decision to approve a limited exception for certain reliability projects supports protestors’ arguments that all BRPs that would otherwise be subject to the MISO Competitive Developer Selection Process should be exempt.

**b) Granting The Complaint Will Not Upend Ex Ante Cost Allocation**

Unable to defend the current cost allocation on the basis of the facts or the law, the MISO transmission owners try to raise the specter of administrative overload by claiming that granting the Complaint would result in a “proliferation” of cost allocation complaints that would “upend the certainty of requiring *ex ante* cost allocation methods that the Commission has sought to foster in previous rulemakings.”<sup>233</sup> The MISO transmission owners’ argument is easily dismissed. As an initial matter, it is important to be clear as to the Complainants’ ask. Complainants are not asking to redo the cost allocation for previously approved BRPs, *i.e.*, the cost allocation of BRPs approved prior to MTEP19. The Complaint, filed in January 2020, applies to MTEP19 (approved by the MISO Board in December 2019) and prospectively for new BRPs. Following the *ODEC*

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<sup>231</sup> *Id.*

<sup>232</sup> *Id.* at P 7.

<sup>233</sup> MISO TO Protest at 32. Given that the MISO transmission owners make much of the fact that under the current methodology, BRPs are not selected in the regional plan for purposes of cost allocation (*id.* at 14) and the Commission requirement for an *ex ante* cost allocation method applies to “facilities selected in a regional transmission plan for purposes of cost allocation,” *Order No. 1000-A*, 139 FERC ¶ 61,132 at P 286, the slippery slope argument is misplaced. Once the Complaint is granted and MISO returns to LODF for BRPs, the argument could be relevant, but as discussed herein, even then is not a bar to establishing that the methodology results in unjust and unreasonable cost allocation.

decision, the Commission required that PJM correct cost allocation going back five years, from May 24, 2015 to present.<sup>234</sup> The Complaint requires no such backwards look.

It is also important to remember that BRPs are transmission additions needed for reliability, including NERC criteria. Presumably every BRP is necessary to assure reliable service in MISO, no matter who is paying for the addition, and the best project has been chosen by MISO to address the identified reliability need. While *ex ante* cost allocation is important, it cannot be said that the need for reliability projects would be different based on the *ex ante* cost allocation for the project as may be the case for a market efficiency or multi-value project. While Complainants agree that *ex ante* cost allocation is a worthy Commission goal, ensuring that reliability-based upgrades are paid for by those that benefit is not just a goal, it is a Commission statutory requirement.<sup>235</sup>

While the MISO transmission owners are apprehensive over a “slippery slope” that will jeopardize future *ex ante* cost allocation,” the Commission directed transmission providers to adopt *ex ante* cost allocation methods to provide some certainty for all participants in a regional planning process. The *ex ante* cost allocation process, however, was never at the expense of the cost allocation method being just and reasonable. The Commission has an ongoing statutory duty to ensure that that the cost allocation method is just and reasonable as new information comes to

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<sup>234</sup> *PJM Interconnection, L.L.C.*, 168 FERC ¶ 61,133 (2019).

<sup>235</sup> In *Delaware Pub. Serv. Comm’n & Maryland Pub. Serv. Comm’n, v. PJM Interconnection, L.L.C. and Certain Transmission Owners Designated under CTOA RS FERC No. 42*, 164 FERC ¶ 61,035 (2018), the Commission acknowledged the requirement to have a cost allocation methodology “on file and approved by the Commission . . . to explain how the costs of new transmission facilities selected in a regional transmission plan for purposes of cost allocation are to be allocated, consistent with the cost allocation principles set forth in Order No. 1000.” *Id.* at P38. The PJM Transmission Owners made the arguments regarding the Delaware parties’ complaint conflicting with *ex ante* requirements in seeking rehearing of the Commission Order. The Commission rejected the rehearing requests, finding “As the Court of Appeals found in *South Carolina Public Serv. Authority v. FERC*, [762 F.3d 41, 85 (D.C. Cir. 2014)] ‘the Commission’s adoption of a beneficiary-based cost allocation method is a logical extension of the cost causation principle. Under that basic tenet, which we have repeatedly embraced, ‘costs are to be allocated to those who cause the costs to be incurred and reap the resulting benefits.’”). *Delaware PSC & Maryland PSC v. PJM & Certain PJM TOs Order, order on reh’g*, 166 FERC ¶ 61,161 at P 37 (2019)(footnotes omitted).

light. It can make predictions based on historical information that the adopted cost allocation methodology is just and reasonable, but if the facts demonstrate the prediction did not come to pass,<sup>236</sup> the Commission is required to act. For that reason, the Commission has not refrained from revising cost allocation on a prospective basis in response to a Section 206 complaint showing that the existing methodology is unjust and unreasonable, as Complainants have here.

**c) Assertions That Competition Does Not Generate Ratepayer Savings Are Based On Flawed Analysis and Inappropriate Gambits With Commission Jurisdictional Rates**

The Southern Regulators assert that statements in the Complaint regarding ratepayer savings from competition for transmission development and ownership may be illusory. At its core, the Complaint is about just and reasonable cost allocation. As set forth fully in the Complaint and the Pterra Report, the cost allocation for BRPs is not just and reasonable because it mandates local cost allocation even when significant regional reliability benefits exist. Determining just and reasonable cost allocation does not depend on the competition arguments. As such, the Southern Regulators arguments regarding competition do not determine whether the Commission should grant the Complaint.

Although competition does not impact determining a just and reasonable cost allocation methodology, it can, and does, impact the Commission's ability to determine just and reasonable rates generally. The Commission determined in Order No. 1000 that "rights of first refusal in place for these facilities would allow practices that have the potential to undermine the identification and evaluation of a more efficient or cost-effective solution to regional transmission needs, which in turn can result in rates for Commission-jurisdictional services that are unjust and

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<sup>236</sup> Predictions can be inaccurate for a number of reasons, including: (1) the addition of a new region to the RTO; (2) unexpected changes in natural gas prices; (3) the addition of different resources that changes the generation profile in the RTO footprint; (4) lack of load growth; or (5) simply bad information regarding how "recent experience" would translate to future actions.

unreasonable or otherwise result in undue discrimination by public utility transmission providers.”<sup>237</sup> On review, the D.C. Circuit Court of Appeals held that the Commission does not “need to conduct experiments in order to rely on the prediction that an unsupported stone will fall; nor need they do so for the prediction that competition will normally lead to lower prices.”<sup>238</sup> Unlike, however, MISO’s predictions regarding the displacement of “many” BRPs by MEPs and MVPs, the Commission’s predictions about competition leading to lower rates has proven true. Which is precisely why incumbent transmission owners have fought so hard to prevent competition.

**(1) A Comparison Of Competed Projects Versus Non-Competed Projects Unequivocally Demonstrates Ratepayer Savings**

The Complainants appreciate the Southern Regulators’ concern that “generalized statements about significant savings are premature and challenged.”<sup>239</sup> While the Southern Regulators were referencing generalized statements about competition, the Commission should be equally reticent to rely on generalized statements about the “primary benefits of BRPs” in the face of actual proof related to specific projects. Likewise, the Commission has actual proof regarding competition, the very thorough Selection Reports from MISO on its two competed projects.

Those Selection Reports reflect that in the initial MISO competition, 10 of 11 proposals in response to MISO’s initial solicitation proposed some form of cost containment when required to compete for transmission development. These proposals were submitted by MISO incumbent transmission owners or their affiliates and the affiliates of incumbent transmissions in other regions

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<sup>237</sup> *Order No. 1000*, FERC Stats. & Regs. ¶ 31,323 at 7.

<sup>238</sup> *South Carolina Public Serv. Authority v. FERC*, 762 F.3d at 65.

<sup>239</sup> Southern Regulators at 19.

competing outside their retail territory.<sup>240</sup> The selected developer, an affiliate of LS Power, committed to a series of consumer friendly concessions, including “(i) a Total Rate Base Cap of \$58.1 million; (ii) an ROE cap at the lesser of 9.80% inclusive of incentives or the MISO region-wide base ROE plus an RTO participation adder; (iii) a Schedule Guarantee under which the ROE will be reduced if the Schedule Guarantee is not met; and (iv) an Equity Percentage Cap.”<sup>241</sup> The 9.8% return on equity, inclusive of incentives, was lower than the MISO-wide return at the time which was 10.32% plus incentives.<sup>242</sup>

When MISO reviewed the results of its second solicitation, not surprisingly, eight of the 11 proposals offered a return on equity of 9.8% or below and an equity percentage of 45% or below.<sup>243</sup> As a useful comparison, when the Commission lowered the MISO-wide base return on equity to 9.88%, the MISO transmission owners sought rehearing, asserting that “a base ROE of 9.88 percent does not provide investors in the MISO Transmission Owners’ transmission operations with an opportunity to earn a return commensurate with returns available from other investments of comparable risk, and is insufficient to enable the MISO Transmission Owners to attract the capital they require for transmission investments.”<sup>244</sup> This real world information is far from generalizations.

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<sup>240</sup> MISO, Duff-Coleman EHV 345 kV Competitive Transmission Project, Selection Report, December 20, 2016, p. 8, available at <https://cdn.misoenergy.org/Duff-Coleman%20EHV%20345kv%20Selection%20Report82339.pdf> (“Duff-Coleman Selection Report”) at 26.

<sup>241</sup> Republic Transmission, LLC Formula Rate Transmittal Letter, filed December 19, 2018 in Docket No. ER19-605-000 (“Republic Transmittal Letter”) at 6.

<sup>242</sup> The MISO-wide return on equity has been the subject of extensive litigation, *see* EL14-12-003, EL15-45-000.

<sup>243</sup> MISO, Hartburg-Sabine Junction 500 kV Competitive Transmission Project, Selection Report, November 27, 2018, p. 2, available at <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf>. In addition to the lower return on equity, 11 of the 12 proposals contained some form of cost cap.

<sup>244</sup> Request for Rehearing of MISO Transmission Owners filed December 23, 2019 in Docket Nos. EL14-12-004 and EL15-45-001 (“MISO TO’s Rehearing Request”). See also, Request for Rehearing of Ameren

As was apparent when SPP solicited proposals for what SPP estimated was a \$16.8 million project and received 11 respondents, the interest in transmission investment is significant.<sup>245</sup> As noted above, the Commission does not “need to conduct experiments in order to rely on the prediction that an unsupported stone will fall; nor need they do so for the prediction that competition will normally lead to lower prices.”<sup>246</sup>

Finally, the Southern Regulators submit with their Protest an analysis prepared by Concentric Energy Advisors for MISO transmission owner Ameren and certain other incumbent transmission owners,<sup>247</sup> although the Southern Regulators assert that they “do not endorse the CEA White Paper or the Brattle Report.”<sup>248</sup> The CEA White Paper critiques aspects of the Brattle Report. In August 2019, the Brattle Group fully responded to the CEA White Paper, laying out the errors in CEA’s resulted-oriented analysis.<sup>249</sup> There is no authentic debate that competition results in lower rates.

**(2) The Assertion That Retail Rates Are Lower Than Commission Jurisdictional Transmission Rates Ignores The MISO Tariff And Commission Jurisdiction Over The Rates For MISO Transmission**

In opposing appropriate cost allocation for BRPs, the Southern Regulators claim that ratepayers would pay less if the incumbent transmission owner constructs a BRP than if the BRP

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Companies, December 23, 2019 in Docket Nos. EL14-12-004 and EL15-45-001; Motion to Intervene Out-of-Time, Motion to Lodge and Request for Rehearing of Edison Electric Institute, filed December 23, 2019 in Docket Nos. EL14-12-004 and EL15-45-001.

<sup>245</sup> Although SPP ultimately determined that the project was not warranted, one of the respondents offered a binding cost commitment on the project of \$7.5 million, although the entity was not the selected developer. *See*, Post-Technical Conference Comments of LSP Transmission Holdings, LLC, filed October 3, 2016 in Docket No. AD16-18-000.

<sup>246</sup> *South Carolina Public Serv. Authority v. FERC*, 762 F.3d at 65.

<sup>247</sup> Attachment 1 to Southern Regulators’ Protest, at Cover (“CEA White Paper”).

<sup>248</sup> Southern Regulators’ Protest at 20, fn 72.

<sup>249</sup> *See*, Responsive Supplemental Comments of LSP Transmission Holdings, LLC, filed September 11, 2019 in Docket No. AD160-18-000, Attachment B.

were subject to competition pursuant to Order No. 1000 because retail rates are lower than FERC established rates. Specifically, the Southern Regulators assert “[t]he majority of BRP *costs are collected through retail rates (not MISO TO rates) that are subject to retail rate jurisdiction* and state and local regulator review, and at returns on equity (ROEs) that are historically substantially lower than the rates MISO TOs receive under the MISO Tariff.”<sup>250</sup> Consequently, they conclude “BRPs subject to full recovery at MISO Tariff rates (or even lower competitive transmission developer rates) could be **more expensive** than continuing with the current BRP construct.”<sup>251</sup>

The problem with the Southern Regulators’ assertions is that the Commission sets the rates for BRPs, whether constructed by incumbent transmission owners or nonincumbent developers, and the costs for BRPs are collected pursuant to the transmission owners’ rates under the MISO Tariff.<sup>252</sup> The Southern Regulators nevertheless erroneously assert “[a]s the vast majority of transmission service provided by a TO is to serve its retail load (which is subject to state commission regulation), only a fraction of the TO’s actual transmission revenue requirement is recovered through the MISO Tariff, including BRP revenue requirements.”<sup>253</sup>

The Southern Regulators’ confusion seems to be based on a couple of factors. In asserting that the “vast majority of transmission service provided by a TO is to serve its retail load,” the

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<sup>250</sup> Southern Regulators at 5 [emphasis added], 18-19. Interestingly, notwithstanding any historical reference to state authorized returns on equity, in seeking Rehearing of the Commission’s return on equity order in Docket Nos. EL14-12-004 and EL15-12-001, the MISO transmission owners asserted that the Commission erred, in part, because there was record evidence “that most state authorized ROEs for lower-risk utilities during the Docket No. EL14-12 study period were higher than the 9.88 percent ROE determined in Opinion No. 569 for the MISO Transmission Owners’ transmission operations.” MISO TO’s Rehearing Request at 13.

<sup>251</sup> *Id.* at 5 [emphasis in original]. In the parenthetical the Southern Regulators seem to be conceding that, on a comparison of FERC rates, competitive transmission has lower rates. Based on competition to date the concession is accurate.

<sup>252</sup> Rates are collected based on annual transmission revenue requirements as reflected in MISO Attachment O. *See, e.g.*, the Entergy Services Formula Rate Informational Filing in Docket No. ER16-2425 (which includes the separate Formula for each Entergy operating company), or Cleco Power LLC’s filing March 10, 2020 in Docket No. ER20-1230-000 as examples.

<sup>253</sup> Southern Regulators at 18, fn 65.

Southern Regulators ignore that it is MISO, not the local transmission owner, that is the transmission provider. The Commission's regulations "require that an RTO be the sole provider of transmission service over the facilities that it controls."<sup>254</sup> Thus, transmission owners and independent transmission company (ITC) participants are no longer the transmission providers within MISO.<sup>255</sup>

In their Protest, the Southern Regulators seek to rely on MISO Modules for their erroneous conclusion that retail regulators set rates for BRPs. They cite a sentence in MISO Tariff, Module B, § 37.3.a. that states:

- a. **Bundled Load:** Transmission Owners and ITC Participants taking Network Integration Transmission Service to serve their Bundled Load shall not pay charges pursuant to Schedules 1, 3 through 6 and Schedule 9.<sup>256</sup>

While the Southern Regulators are correct that Transmission Owners with bundled load do not pay certain charges, this does not mean that their rates are set at retail. The above provision goes on to provide:

After the Transition Period ends, beginning February 1, 2008, the total Schedule 9 revenues to be distributed to Transmission Owners and ITC Participants under the ISO Agreement shall include the Schedule 9 charges *that would be payable by any Transmission Owners and ITC Participants covered by the above exclusion or by a similar exclusion in a Service Agreement with the Transmission Provider ("imputed revenues")*. In distributing Schedule 9 revenues to Transmission Owners and ITC Participants, the Transmission

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<sup>254</sup> *Midwest Independent Transmission System Operator, Inc. and Ameren Services Company*, 106 FERC ¶ 61,293 (2004)(requiring the rates, terms and conditions of transmission service purchased by the transmission owners and ITC participants from Midwest ISO in order to serve their bundled retail load must be on file with the Commission.)

<sup>255</sup> 18 C.F.R. § 35.34(k)(1)(i); *see also, Midwest Independent Transmission System Operator, Inc.*, 129 FERC ¶ 61,221 at P 51, n.26 (2009)("Midwest ISO must be the sole provider of transmission service over its system and, therefore, transmission owners must take service under the Midwest ISO Tariff to serve their bundled retail load.").

<sup>256</sup> MISO Tariff, Module B, § 37.3.a. Schedule 1 refers to Scheduling, System Control and Dispatch Service; Schedule 3 to Regulating Reserve; Schedule 4 to Energy Imbalance Service; Schedule 5 to Spinning Reserve; Schedule 6 to Supplemental Reserve; and Schedule 9 to Network Integration Transmission Service.

Provider shall deduct the imputed revenues attributed to each such Transmission Owner and ITC Participant from the total Schedule 9 revenues that are due to that Transmission Owner or ITC Participant.<sup>257</sup>

Thus, the fact that there is no “payment” is merely an administrative convenience function, as both the charges and revenues are accounted for by MISO, under the MISO rate. Module B provides no basis for the Southern Regulators arguments.

The Southern Regulators’ objection to the Complaint could also emanate from the practice of retail regulators resetting FERC-jurisdictional transmission rates to create different transmission rates for different classes of customers.<sup>258</sup> The Southern Regulators cannot discriminate against certain classes of customers in this fashion and arguments that are rooted in such discrimination are *prima facie* invalid.<sup>259</sup> Although the Commission allowed for an exception to open access for bundled rate customers, the bundled rate exception cannot be used by retail regulators to impose differential rate treatment for transmission under MISO’s operational control.<sup>260</sup> And in this instance, the differential rate treatment is being touted as an “incumbent advantage” that the Southern Regulators urge the Commission to take into account

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<sup>257</sup> *Id.* [emphasis added]; see also, *Midwest Independent Transmission System Operator, Inc.*, 122 FERC ¶ 61,090 (2008).

<sup>258</sup> For an explanation of how such resetting of rates could occur, an affiliate of MISO transmission owners Northern States Power Company and Northern States Power Company, Southwestern Public Service Company, laid it out in detail to the Public Utilities Commission of Texas in a matter involving both the MISO and SPP areas of Texas. See Southwestern Public Service Company’s Initial Brief, Docket No. 46901, filed with the Public Utilities Commission of Texas, June 21, 2017, at 17-19 and Attachments A and B, available at [http://interchange.puc.texas.gov/Documents/46901\\_56\\_944950.PDF](http://interchange.puc.texas.gov/Documents/46901_56_944950.PDF).

<sup>259</sup> *Mississippi Power & Light Company v Mississippi*, 108 S. Ct. 2428 (1988)(confirming that the Federal Energy Regulatory Commission has exclusive authority over wholesale rates) *Nantahala Power & Light Co. v. Thornburg*, 106 S.Ct. 2349 (1986)(striking down State Commission action as preempted when the effect of the State Commission’s order was to force Nantahala to calculate its retail rates as though FERC had allocated it a greater share of the low-cost power).

<sup>260</sup> *Midwest Independent Transmission System Operator, Inc. and Ameren Services Company*, 106 FERC ¶ 61,293 at P 24 (2004) requiring AmerenUE in any proposal to apply incentive rates to other customers within its pricing zone, to demonstrate that such proposed rate change is not unduly discriminatory as compared to the rates charged for AmerenUE’s bundled retail load, and that such proposal otherwise meets the FPA’s requirements.).

to deny the Complaint. The Southern Regulators are not urging denial of the Complaint because the cost allocation would be wrong, but because granting the Complaint may impact the Southern Regulators' attempt to occupy a portion of this Commission's jurisdictional realm.

**d) LS Power's Business Interests Are Only Realized By Providing Ratepayer Benefits**

The Southern Regulators assert that "LS Power (and its owners) stand to benefit greatly if it is able to expand even further the type and magnitude of transmission projects in MISO for which it can compete and maximize profit . . . Expanding LS Power's access to building BRPs could result in a significant increase in its shareholder value."<sup>261</sup> The assertion is off-base for a number of reasons. First, the complaint is about the appropriate cost allocation for BRPs. To be sure, a restriction on competition is an important, and intentional,<sup>262</sup> by-product of the existing BRP location-based cost allocation. Nevertheless, the Commission's determination of the validity of the Complaint will turn exclusively on whether or not the BRP cost allocation remains just and reasonable.

Regarding the assertion of a "significant increase in shareholder value" for one company as a result of expanded competition, the Southern Regulators assertion is exactly backwards. The mere opening of competition provides no guarantee of increased shareholder value to LS Power or any other entity. On the other hand, the lack of transmission competition, for BRPs and other system additions, guarantees that any increase in shareholder value as a result of new transmission

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<sup>261</sup> Southern Regulators at 3-4.

<sup>262</sup> MISO and MISO Transmission Owner Transmittal Letter, Docket No. ER13-186-000, at page 11 filed on October 25, 2012 ("Baseline Reliability Project Modification Filing")(asserting that the cost allocation change "is appropriate to ensure that public utility members of MISO, who are obligated to comply with mandatory reliability standards and state-imposed service obligations, have the option afforded to them in Order No. 1000 to retain a right to build a local transmission facility.").

goes exclusively to the incumbent utility.<sup>263</sup> Stated more succinctly: no competition means any shareholder value from new transmission is *guaranteed* to incumbent utilities; competition means no entity is guaranteed anything.

CMTC and IECA support increased competition for transmission additions, including BRPs because competition assists consumers in ensuring that the transmission rates they pay are just and reasonable. The benefit of competition is that only the developer/owner independently determined to be more efficient or cost effective is awarded the opportunity to move forward through the regional process with the project that has been determined to be needed. Without that competition, transmission customers like CMTC's and IECA's members are left with little ability to effectively ensure just and reasonable rates.<sup>264</sup> For example, notwithstanding more than five years of litigation, one of the mechanisms to ensure just and reasonable rates, challenges to return on equity, has not resulted in a lower return on equity for projects guaranteed to MISO's incumbent transmission owners when competition is not available, than the capped returns on equity obtained though competition on the two projects MISO has competed.<sup>265</sup> Again, stated more succinctly, transmission competition has provided more ratepayer benefit through only two MISO competed

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<sup>263</sup> For example, between 2017 and 2019 Entergy's earnings per share increased from \$2.28 in 2017, to \$4.63 in 2018, and \$6.30 in 2019. <http://integratedreport.entergy.com/financial-highlights/index.php#five-year-comparison> For 2019, Entergy reported an enterprise-wide return on equity was 13.02%. While Entergy's results were not all as a result of BRPs, or even commission jurisdictional transmission, as noted by MISO and the MISO transmission owners, a significant number of BRPs have been in MISO South. See, MISO Answer, Webb Testimony at p. 16, line 4 – p. 17, line 3.

<sup>264</sup> Currently, the only mechanisms to challenge the rates for transmission facilities are through litigation over the return on equity for those facilities or a challenge to the prudence of particular expenditures.

<sup>265</sup> See, Duff-Coleman Selection Report p. 8. As noted, *infra*, Republic's capped return on equity was the lesser of 9.8% (inclusive of incentives) or the MISO-wide ROE plus the RTO adder; MISO, Hartburg-Sabine Junction 500 kV Competitive Transmission Project, Selection Report, November 27, 2018, p. 2, available at <https://cdn.misoenergy.org/Hartburg-Sabine%20Junction%20500%20kV%20Selection%20Report296754.pdf> at 3 (noting that 8 of the 11 proposals offered an ROE of 9.8% or below and an equity percentage of 45% or below).

projects than the tremendous resources expended by customers and the Commission to determine rates of return for MISO's incumbent utilities.

#### **F. LODF Is The Appropriate Just And Reasonable Rate To Be Set By The Commission**

Even though the LODF was the cost allocation method used to allocate the majority of the costs of most BRPs prior to 2012,<sup>266</sup> MISO and the MISO transmission owners now argue that LODF is a not an accurate cost allocation method.<sup>267</sup> They primarily argue<sup>268</sup> that the LODF method analyzes impacts and thus may show an increase in flows on an adjacent line that appears to be beneficial but is actually detrimental.<sup>269</sup> Complainants easily address this hypothetical by explaining why the change in flows translate into benefits, *e.g.*, more capacity being available to provide service, and processes to ensure that the flows impacted reflect real benefits.<sup>270</sup> Further as explained above, such arguments were not an issue that MISO or the MISO transmission owners raised when they filed to change the cost allocation method. Neither MISO nor the MISO transmission owners provide analysis or evidence showing that false benefits occurred regularly

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<sup>266</sup> With 20% being regionally allocated based on load ratio share for some projects.

<sup>267</sup> MISO Answer at 37-38; MISO TO Protest at 9. The Commission also did not find that LODF is not a just and reasonable methodology for allocating the costs of BRPs, *supra n.* [ ], which is unsurprising given that many regions use some form of a flow based analysis to allocate the costs of new transmission facilities.

<sup>268</sup> They also argue that LODF cannot be used for certain types of facilities, a point that Complainants also address. Further, the express concern with redoing the cost allocation for previously approved BRPs, *i.e.*, the cost allocation of BRPs approved prior to MTEP19, is a point that Complainants also put to rest herein.

<sup>269</sup> MISO TO Protest at 9.

<sup>270</sup> *Austria Responsive Testimony* at 5:5-8 (“Positive distribution factors represent a benefit associated with the facility as the power flow on the facility has been reduced enabling other transactions to be supported by the facility or potentially delaying the need to upgrade it.,” see also *Austria Responsive Testimony* at 8:7-17 “Consider the case of adding a new BRP, such as a new transmission line, to the grid. Say that the new line carries a power flow of 100 MW. Excluding transmission losses, there would be a net reduction in flow throughout the rest of the grid of 100 MW. Say further that out of this 100 MW total reduction, a neighboring region sees an aggregate reduction in flow on its transmission facilities of 30 MW. The flow reduction can mean a variety of things to the neighboring region, the ability to support more transactions, delay an upgrade, accommodate output from a new generator interconnection, among others, all of which represent a benefit to that region. The LODF measures the flow reduction as a proxy for the potential benefits the neighboring region may realize with the flow reduction, but stops short of identifying which of the potential benefits that neighboring region should actually pursue.”).

when LODF was previously in effect. To the contrary, they relied on the LODF methodology to argue that the zone where the BRP was physically located benefits from the project adding “[b]ecause the LODF methodology determines the pricing zones having flows impacted by the BRPs, this analysis of current BRP cost allocation demonstrates that the benefits provided by BRPs are realized primarily in the pricing zone where the BRP is located.”<sup>271</sup> Regardless, they have not identified that their hypothetical arguments led to inaccurate LODF analysis related to any of the Projects reviewed by Pterra. What we know from the Pterra Report is that the problems with the current location-based BRP methodology are far from hypothetical.

The Commission should give no weight to the hypothetical arguments regarding LODF in determining whether to eliminate the location-based BRP methodology. To the extent the assertion has any weight at all, it relates to specific issues with any anomalous LODF results (*i.e.*, only accounting for the decreased flows). Any such issues are not relevant to whether to eliminate the erroneous location-based, non-analytical cost allocation method for BRPs and can be addressed in implementing LODF without extensive procedures.

### **III. REQUEST FOR WAIVER OF NOTARIZATION REQUIREMENT**

Complainants request that the Commission accept the attached written testimony of Mr. Ricardo R. Austria without his affirmation being notarized. On May 8, 2020, the Commission issued Supplemental Notice Waiving Regulations in Docket No. AD20-11-000 waiving through September 1, 2020, the Commission’s regulations that govern the form of filings submitted to the Commission to the extent entities are unable to meet those requirements due to the emergency conditions caused by COVID-19. In particular, the Commission noted that certain filings must be supported by a sworn declaration and recognized that “steps an entity has taken to address the

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<sup>271</sup> MISO and MISO TOs Transmittal, Docket No. ER13-186-000 filed on Oct. 12, 2019 at 6.

coronavirus may prevent the filing from containing such a declaration.” While Complainants have provided an affirmation to accompany Mr. Austria’s testimony, they are, at this time, unable to have that affirmation notarized due to the emergency conditions caused by COVID-19. To the extent that the notarization of written testimony does not fall within the parameters of the Supplemental Notice, Complainants requests such a waiver as consistent with the public interest in reducing risks to health and safety, and to permit acceptance of the testimony submitted with this Answer without notarization.

#### **IV. CONCLUSION**

Based on the foregoing, Complainants request that the Commission: (i) accept this Answer; (ii) grant the waiver to the Notarization requirement, if any, to the Affirmation of Ricardo Austria regarding his testimony; and (iii) grant the Complaint finding (a) that the location-based cost allocation methodology for BRPs is unjust and unreasonable, (b) application of the previously applied LODF methodology is just and reasonable for all BRPs starting with MTEP19, and (c) require MISO to revise all Tariff, Transmission Owner Agreement or other provisions that prohibit regional cost allocation or competition for BRPs.

June 8, 2020

Respectfully submitted,

By: /s/ Robert A. Weishaar, Jr.

McNees Wallace & Nurick, LLC  
1200 G Street, NW  
Suite 800  
Washington, DC 20005  
Tel. (202) 898-0688  
Email: [bweishaar@mcneeslaw.com](mailto:bweishaar@mcneeslaw.com)

Kenneth R. Stark  
100 Pine Street  
Harrisburg, PA 17101  
Tel. (717) 237-5378  
Email: [kstark@mcneeslaw.com](mailto:kstark@mcneeslaw.com)

***Counsel to the Coalition of MISO  
Transmission Customers***

By: /s/ Paul N. Cicio

Industrial Energy Consumers of America  
1776 K Street, NW, Suite 720  
Washington, DC 20006  
Tel. (202) 223-1661  
Email: [pcicio@ieca-us.org](mailto:pcicio@ieca-us.org)

***President, Industrial Energy Consumers of  
America***

By: /s/ Michael R. Engleman

Robert C. Fallon  
Christina Switzer  
Engleman Fallon, PLLC  
1717 K Street, NW. Suite 900  
Washington, DC 20006  
Tel. (202) 464-1330  
Email: [mengleman@efenergylaw.com](mailto:mengleman@efenergylaw.com)  
[rfallon@efenergylaw.com](mailto:rfallon@efenergylaw.com)  
[cswitzer@energylaw.com](mailto:cswitzer@energylaw.com)

***Counsel for LS Power Midcontinent, LLC***

**CERTIFICATE OF SERVICE**

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

Dated at Washington, DC this 8<sup>th</sup> day of June 2020.

By: /s/ Robert A. Weishaar, Jr.  
McNees Wallace & Nurick, LLC  
1200 G Street, NW  
Suite 800  
Washington, DC 20005  
Tel. (202) 898-0688  
Email: bweishaar@mcneeslaw.com

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

**Coalition of MISO Transmission Customers, )  
Industrial Energy Consumers of )  
America, LS Power Midcontinent, LLC )  
 )  
Complainants, )  
 )  
Midcontinent Independent System )  
Operator, Inc. )  
 )  
Respondent )**

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**Docket No. EL20-19-000**

**RESPONSIVE TESTIMONY  
OF  
RICARDO R. AUSTRIA**

**ON BEHALF OF  
COALITION OF MISO TRANSMISSION CUSTOMERS,  
INDUSTRIAL ENERGY CONSUMERS OF AMERICA,  
AND LS POWER MIDCONTINENT, LLC**

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

**Coalition of MISO Transmission Customers, )  
Industrial Energy Consumers of )  
America, LS Power Midcontinent, LLC )  
Complainants, )  
Midcontinent Independent System )  
Operator, Inc. )  
Respondent )**

**Docket No. EL20-19-000**

**RESPONSIVE TESTIMONY OF  
RICARDO R. AUSTRIA**

**1 INTRODUCTION AND EXPERIENCE**

**2 Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

3 A. My name is Ricardo Austria and my business address is 4 Automation Lane, Suite 150,  
4 Albany, NY 12205.

**5 Q. IN WHAT CAPACITY ARE YOU EMPLOYED?**

6 A. I am employed by Pterra, LLC (“Pterra”), an independent consulting firm that specializes  
7 in electric power matters. My present title is Executive Principal.

**8 Q. ON WHOSE BEHALF ARE YOU TESTIFYING IN THIS PROCEEDING?**

9 A. I am testifying on behalf of the Complainants identified as the Coalition of MISO  
10 Transmission Customers, the Industrial Energy Consumers of America, and LS Power  
11 Midcontinent, LLC.

1 **Q. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

2 A. I received a Master of Engineering Degree in Electric Power Systems from the  
3 Rensselaer Polytechnic Institute in Troy, New York in 1988. My Bachelor of Science  
4 degree in Electrical Engineering was awarded in 1979 by the University of Santo Tomas  
5 in Manila, Philippines.

6 **Q. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

7 A. I have held my present position as Executive Principal since February 2005. Previously,  
8 I was Vice President for Transmission Services for EPRI Solutions, Inc. and prior to that,  
9 I was employed by Power Technologies, Inc., then a subsidiary of Stone and Webster,  
10 Inc., where I was Vice President of Consulting Services. In all these positions, I  
11 coordinated the consulting, training and software development services of a team of  
12 engineers and consultants in a variety of fields in electric power, including power system  
13 dynamics, economics, generation, energy markets, transmission and distribution,  
14 planning, operations, engineering and reliability. In that role, I also provided services as  
15 an expert witness and industry advisor to utilities, public commissions, private  
16 commercial interests, and banks and financial institutions, and as an instructor in a  
17 number of courses on topics that included power system reliability, transmission  
18 planning, voltage stability and energy markets.

19 **Q. HAVE YOU PREVIOUSLY FILED TESTIMONY BEFORE A REGULATORY**  
20 **COMMISSION?**

21 A. I have provided written testimony before the Federal Energy Regulatory Commission on  
22 the generation interconnection queue improvements in the Midcontinent Independent  
23 System Operator, Inc. (MISO), on the joint application of Northern States Power  
24 Company and New Century Energies, Inc. for the approval of merger and reorganization,

1 on transmission projects included in the PJM Interconnection’s Regional Transmission  
2 Expansion Plan (RTEP), and on the U.S. Department of Energy’s proposed designation  
3 of transmission corridors. I have also provided testimony before the New York State  
4 Public Service Commission, the Public Service Commission of Maryland, the Arkansas  
5 Public Service Commission, the Texas Public Utility Commission, and the Michigan  
6 Public Service Commission, all on matters relating to electric power system reliability,  
7 planning and operations.

8 **II. PURPOSE OF TESTIMONY**

9 **Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

10 A. The purpose of my testimony is to respond to the testimony of Mr. Jeffrey R. Webb on  
11 behalf of MISO. In their complaint, Complainants proposed to use a Line Outage  
12 Distribution Factor (LODF) as the replacement Section 206 rate for allocating the costs  
13 of Baseline Reliability Projects (BRP) in place of automatically allocating the costs only  
14 to the zone where the BRP is physically located. In support of their proposal,  
15 Complainants provide examples<sup>1</sup> applying LODF analysis to various BRPs  
16 demonstrating that other zones – outside of the zone where the BRP is physically located  
17 – benefit from the BRP. Mr. Webb does not disagree with the substance of the analysis,  
18 i.e., he does not say that the LODF analysis was incorrectly done. Nevertheless, he offers  
19 various objections to using an LODF analysis, one of which is to incorrectly claim that  
20 the impact shown by a LODF analysis does not represent real benefits to the utility

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<sup>1</sup> Pterra, “LODF-Mile Cost Allocations for Selected Transmission Projects in MISO” Final Report (Jan. 16, 2020) (“Pterra Report”) (Attachment B of Complaint)

1 impacted, e.g., by increasing transmission capability. This testimony responds to the  
2 issues he raises regarding the use of LODF.

3 **Q. OTHER THAN YOUR TESTIMONY, ARE YOU SPONSORING ANY**  
4 **EXHIBITS?**

5 **A.** None

6 **III. DESCRIPTION OF LODF GENERALLY AND IN THE CONTEXT OF**  
7 **BASELINE RELIABILITY PROJECTS AND WHY THAT ALLOCATION**  
8 **CORRECTLY ALLOCATES THE COSTS OF BRP**

9 **Q. PLEASE PROVIDE AN OVERVIEW OF A TRADITIONAL LODF ANALYSIS**

10 **A.** Traditional LODF is based on the premise that reliability in an interconnected alternating  
11 current network is a capability that propagates, not along civic boundaries or utility  
12 footprints, but in accordance with the impedance characteristics of transmission facilities.  
13 Hence, LODF analysis examines how power flows on the grid change as projects  
14 intended, in this case, to enhance reliability are implemented. For example, consider a  
15 new transmission line built in parallel to an existing line in order to relieve the reliability-  
16 based overload of the existing line. The new transmission line will reduce the flow on  
17 the parallel line, for one, but in addition, it will also reduce flows on all the other paths in  
18 the whole interconnected grid that are also operating in parallel. This makes sense from a  
19 high-level viewpoint as the addition of the new line increases the overall transmission  
20 capacity of the grid and should therefore reduce the percentage of power flow that each  
21 of the parallel paths must carry. The extent that parallel paths are impacted by the  
22 reduced flow, and the benefits of that reduced flow, e.g., by increased transmission  
23 capability, is what is measured by an LODF analysis.

1 **Q. WHAT IS THE END RESULT OF A TRADITIONAL LODF ANALYSIS?**

2 **A.** The result of such an LODF analysis is a set of distribution factors calculated for each  
3 line and transformer in the interconnected grid that are represented in a power flow  
4 model. The distribution factors can be positive in that the flow on a transmission line or  
5 transformer is reduced by the implementation of a transmission project. Positive  
6 distribution factors represent a benefit associated with the facility as the power flow on  
7 the facility has been reduced enabling other transactions to be supported by the facility or  
8 potentially delaying the need to upgrade it. The distribution factors can be aggregated by  
9 region, owner or other grouping to calculate the sum of benefits for each group.

10 **Q. PLEASE DESCRIBE HOW MISO CONDUCTS AN LODF ANALYSIS FOR A**  
11 **PROPOSED BASELINE RELIABILITY PROJECT.**

12 **A.** MISO uses the same methodology for a BRP as is used in a traditional LODF analysis,  
13 with two modifications. In the MISO LODF-mile methodology as described in MISO  
14 Appendix J of the Transmission Planning Business Practices Manual, titled  
15 “Implementation Rules for LODF Calculation” dated April 1, 2019, there are two  
16 important modifications from traditional LODF analysis. The first is the introduction of a  
17 weighting factor in the form of the length of a line. For instance, if the length of the line  
18 is 20 miles and the LODF is 0.5, then the LODF-mile value is 10.<sup>2</sup> Hence, instead of  
19 aggregating distribution factors, the MISO methodology aggregates LODF-miles by  
20 transmission owner.

21 The second modification is the inclusion of negative distribution factors. Negative  
22 distribution factors occur when the impact on a facility by a proposed reliability project is

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<sup>2</sup> For transformers, the MISO methodology assumed a length of 1 mile.

1 an increase in flow rather than a decrease. Negative distribution factors can occur  
2 primarily in transmission facilities that are not parallel paths to the proposed project.<sup>3</sup>  
3 Noting the earlier observation that a new project reduces the percentage power flow  
4 loading of the overall grid, the resulting aggregate distribution factor will more  
5 commonly be positive. In the MISO methodology, negative distribution factors were  
6 given a positive value and were aggregated together with the other positive distribution  
7 factors. As an example, I have taken Project 3828 from the Pterra Report. In my initial  
8 LODF analysis, I used the MISO approach of aggregating negative distribution factors  
9 with other positive distribution factors. The allocation to the transmission owner where  
10 the BRP was located, International Transmission Company Midwest (ITC Midwest), was  
11 64.19%.

12 I have now recalculated the LODF-mile allocations considering only positive distribution  
13 factors, the traditional way to do an LODF analysis. The allocation to the transmission  
14 owner, ITC Midwest, reduces from 64.49% to 56.15%, i.e., ITC Midwest would be  
15 responsible for fewer costs, while the allocation for neighboring areas such as American  
16 Transmission Company, Xcel Energy and Dairyland Power Cooperative increase, i.e.,  
17 these entities would be responsible for more costs. Moreover, the overall observation  
18 that flow benefits are not limited to just the transmission owner where the BRP is  
19 physically located still holds true. Furthermore, the positive distribution factors

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<sup>3</sup> The example given in the MISO Transmission Owners, p. 9, footnote 23, is an example of a negative distribution factor. The flow on the adjacent line increases rather than decreases. MISO Owners argue that this is a loss of line capacity and is not a benefit. I agree that this is not a benefit and in traditional LODF methodology is not included in the flow benefit aggregation. However, in the specific implementation by MISO of the LODF methodology, MISO opted to include the negative distribution factors in the aggregation of distribution factors. As noted in the main text above, the MISO approach has a minor effect on the allocation of benefits. New BRPs generally reduce overall system loading and thus lead to overall net positive distribution factors, even with the consideration of any negative distribution factors.

1 predominate the LODF-mile allocations as the exclusion of negative distribution factors –  
 2 by performing the LODF as it is normally done, not as done by MISO -- causes less than  
 3 a 10% change in the percent share allocations and still shows a good portion of the  
 4 benefits being outside the zone where the BRP is physically located. Table No. 1 below  
 5 shows the Pterra Calculation, using the LODF methodology as applied by MISO, and the  
 6 results that would occur if negative distribution factors are excluded from the LODF  
 7 calculations.

8 TABLE NO. 1

<b>Cost Allocation for Project ID: 3828</b> <b>Lore-Turkey River-Stoneman 161 kV Rebuild</b> <b>Transmission Owner: International Transmission Company Midwest</b>					
Area	Owner	<i>Pterra Calculation</i>			Only Positive
		LODF Mile	Percent Share	Cost Allocation	Percent Share
295	American Transmission Company	11.75346	9.87%	\$ 2,418,591.03	13.63%
356	Ameren Missouri	0.79809	0.67%	\$ 164,228.52	0.00%
600	Xcel Energy	10.1239	8.50%	\$ 2,083,263.10	11.01%
627	International Transmission Company Midwest	76.7858	64.49%	\$15,800,751.06	56.15%
635	MidAmerican Energy Company	4.1431	3.48%	\$ 852,554.44	1.16%
680	Dairyland Power Cooperative	15.4566	12.98%	\$ 3,180,611.85	18.04%
<b>Totals:</b>		119.0610	100%	\$ 24,500,000	

9  
 10 **Q. WHAT IS THE END RESULT OF AN LODF ANALYSIS FOR A BASELINE**  
 11 **RELIABILITY PROJECT?**

12 **A.** The end result of an LODF analysis for a BRP is the same as for a traditional LODF  
 13 analysis in that the LODF analysis offers a proxy for the flow-based benefits of a BRP  
 14 that results in major changes to power flow in the grid, such as new transmission lines  
 15 and transformers. The main feature of the LODF analysis is that it recognizes  
 16 improvements in reliability that are not defined by civic boundaries or utility footprints

1 but rather by the physical characteristics of the grid. If the benefits are local, then the  
2 LODF will recognize this. However, if the benefits spread to neighboring regions, as  
3 shown in the Pterra Report, the LODF method will reflect those benefits and provide a  
4 good measure of the extent such neighboring regions benefit from a BRP.

5 **Q. PLEASE EXPLAIN HOW THE END RESULT OF AN LODF ANALYSIS**  
6 **ALLOCATES BRP COSTS?**

7 **A.** This is best illustrated with an example. Consider the case of adding a new BRP, such as  
8 a new transmission line, to the grid. Say that the new line carries a power flow of 100  
9 MW. Excluding transmission losses<sup>4</sup>, there would be a net reduction in flow throughout  
10 the rest of the grid of 100 MW. Say further that out of this 100 MW total reduction, a  
11 neighboring region sees an aggregate reduction in flow on its transmission facilities of 30  
12 MW. The flow reduction can mean a variety of things to the neighboring region, the  
13 ability to support more transactions, delay an upgrade, accommodate output from a new  
14 generator interconnection, among others, all of which represent a benefit to that region.  
15 The LODF measures the flow reduction as a proxy for the potential benefits the  
16 neighboring region may realize with the flow reduction, but stops short of identifying  
17 which of the potential benefits that neighboring region should actually pursue.

18 **Q. HOW DID YOU DETERMINE THE REPRESENTATIVE PROJECTS TO**  
19 **INCLUDE IN THE PTERRA REPORT?**

20 **A.** Projects included in the Pterra Report were selected on the basis of two factors: (1)  
21 geographical location and (2) availability of modeling information. Projects were  
22 selected to represent the whole footprint of MISO transmission owners. In many cases,  
23 projects tended to be close to the boundary of the local transmission owner where parallel

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<sup>4</sup> The transmission losses may increase or decrease depending on the circumstances of the BRP. However, the change in the amount of transmission losses will be a small fraction of the 100 MW change in flow from the BRP.

1 flow paths through neighboring transmission owners could be captured by the LODF  
2 methodology. To apply the MISO LODF-mile methodology, modeling and project  
3 information were requested from MISO. Projects that were incompletely modeled or not  
4 modeled at all in the MISO power flow cases or for which the details were not clear or  
5 not provided by MISO were not evaluated and therefore not included in the Pterra  
6 Report.

7 **IV. RESPONSE TO SPECIFIC ISSUES RAISED BY MR. WEBB**

8 **Q IS THE INFERENCE THAT RELIABILITY ISSUES ARE LOCAL AND THUS**  
9 **BENEFIT THE UTILITY WITH THE VIOLATION ACCURATE?**

10 **A.** Mr. Webb states in p. 20 that “BRPs are solutions to local transmission issues that have  
11 benefits to customers located near the transmission issue.” I disagree with this in the  
12 context that it is given as a generalization rather than a specific example. The flow  
13 changes that occur from a BRP will follow the path dictated by the physics of the grid  
14 and not civic boundaries or utility footprints. This is demonstrated throughout the sample  
15 projects included in the Pterra Report. Only by coincidence do the physics result in flow  
16 changes that align with civic boundaries or utility ownership of transmission facilities  
17 that are proximate to the BRP. However, this is not the rule and any assumption that it is  
18 the rule, while ignoring the broader findings shown by simulation and analysis, would be  
19 incorrect. An example can explain. Project 9716 was in the CLECO area and is a rebuild  
20 of a 138 kV transmission line. Without specifically addressing the analysis performed,  
21 Mr. Webb suggests that because the reliability violation was on the CLECO system,  
22 CLECO is the beneficiary. The reliability need for rebuilding the Coughlin to Plaisance  
23 138 kV line is to address its thermal overload following a contingency outage of a  
24 parallel line. It is important to note that the role of transmission is to transfer power from

1 the sources, comprised of generators, to the customer loads. An overload violation of the  
2 NERC reliability criteria develops as a consequence of changes in the use of the  
3 transmission line such as increases in demand, addition of new generation or new patterns  
4 of power flow on the grid, among others. The transmission line would not need to have  
5 changed at all in terms of its thermal rating and other electrical characteristics for the  
6 overload violation to occur. The transmission line is not the cause of the reliability  
7 violation but is the indicator that such a violation is present. Mr. Webb, and others  
8 opposing use of LODF to allocate costs for BRPs, seem to argue that the local utility  
9 somehow “owns” the reliability violation – because the violation is on its system – and,  
10 therefore, that customers in that utility’s zone must be solely responsible for the costs.  
11 That simplistic approach ignores the interconnected nature of the grid. The solution to a  
12 reliability violation may be located in a specific location, i.e., the Coughlin to Plaisance  
13 right-of-way, but the cause of the overload violation is not on the transmission path but  
14 on dispatch of generation and load demand located elsewhere. More importantly, the  
15 implementation of Project 9716 will not only benefit the owner of the rebuilt Coughlin to  
16 Plaisance 138 kV line, CLECO, but will also benefit the neighboring transmission  
17 companies such as Entergy Louisiana, for which application of the LODF method shows  
18 a LODF-mile share of about 35%. In this case, the LODF method identifies that flow  
19 benefits are not localized to CLECO but spread to neighboring transmission owners as  
20 well.

21 **Q. HOW DO YOU RESPOND TO MR. WEBB’S ASSERTIONS THAT THE DATA**  
22 **CONFIRMS THE ESSENTIAL LINKAGE BETWEEN THE PHYSICAL**  
23 **LOCATION OF A BRP AND ITS RELIABILITY BENEFITS?**

24 **A.** As noted in my earlier response to Project 9716, it is incorrect to imply that the  
25 beneficiary of a BRP is the location of the reliability violation, first, because the violation

1 is not due to the affected facilities but rather to changes in system use that can occur  
2 elsewhere, and, second, because the solution introduces flow changes that propagate in  
3 accordance with the impedance characteristics of interconnected transmission facilities  
4 regardless of whether these are local or not. Measuring these flow changes may  
5 demonstrate that the benefits of a particular change in the transmission system results in  
6 benefits only within the ownership boundary of the facility owner, but as demonstrated  
7 by the Pterra Report, the results often show significant flow changes, and thus benefits,  
8 outside the ownership boundary.

9 **Q. DOES AN LODF ANALYSIS PENALIZE – BY ALLOCATING MORE COSTS**  
10 **THAN THE BENEFITS JUSTIFY -- MORE ROBUST TRANSMISSION**  
11 **SYSTEMS TO THE BENEFIT OF LESS ROBUST TRANSMISSION SYSTEMS?**

12 **A.** Mr. Webb on p. 21 states that “the results of the LODF methodology depends simply and  
13 entirely on the impedance of the grid in determining impacts, the impacts to adjacent  
14 systems are driven by the relative robustness of these systems (more or larger  
15 transmission facilities almost always results in lower equivalent impedance). This can  
16 result in more LODF impact being measured on systems that by happenstance contain  
17 more transmission lines and transformers than another adjacent system with fewer  
18 transmission lines and facilities.” Once again going back to the physics of the grid, flow  
19 changes from a BRP project will go in accordance with the impedance of the rest of the  
20 grid. A lower apparent impedance – as may be presented by systems with a  
21 preponderance of high voltage, high capacity transmission facilities -- will attract more of  
22 the flow than a high impedance path. The flow changes on the lower impedance path  
23 will be higher as a consequence. The higher reduced flow in MW has the commensurate  
24 higher benefit by being able to serve additional customer demand, support more

1 transactions or accommodate additional generation output. This is not a penalty but a  
2 benefit and the benefits are allocated appropriately by the LODF method.

3 **Q. DOES AN LODF INAPPROPRIATELY ALLOCATE COSTS WHEN THE BRP**  
4 **IS NEAR THE INTERFACE BETWEEN TWO SYSTEMS?**

5 **A.** Mr. Webb in p. 21 states that “LODF analysis method is highly sensitive to proximity to  
6 the facility being examined, when a BRP is near the interface between two systems, the  
7 LODF analysis can indicate a split in impacts between the two systems that is arbitrary  
8 and not reflective of the actual customers whose reliability violation the BRP resolves.”

9 Once again, Mr. Webb is associating the location of a reliability violation, such as a  
10 thermal overload, with the cause of the violation and with the beneficiary of the BRP.

11 However, the violation is not due to the overloaded line but from some change in system  
12 use located elsewhere. Resolving the violation allows the grid to operate reliably to  
13 transmit generated power to customer loads. Applying the LODF methodology allows  
14 the beneficiaries of the BRP to be clearly identified using a procedure that is based on  
15 physics and not at all arbitrary. LODFs do not depend on utility boundaries or footprints  
16 but on the impedance of the transmission facilities surrounding the BRP. It is not unusual  
17 nor arbitrary that a BRP near an interface between two transmission owners will result in  
18 allocations to the neighboring transmission owner as the proximity can be reflected in  
19 lower apparent impedances and consequently higher LODFs. This just emphasizes the  
20 fact that the beneficiary of a BRP is not just the owner of the BRP where the reliability  
21 violation occurs but the global set of owners whose facilities see a flow reduction from  
22 the BRP’s implementation.

1 **Q. CAN AN LODF ANALYSIS BE APPLIED TO ALL THE TYPES OF FACILITIES**  
2 **THAT COULD BE BUILT AS A BRP?**

3 **A.** The LODF methodology measures impacts on power flow of transmission facilities and  
4 is generally applicable to evaluating transmission projects that address flow related  
5 reliability issues such as thermal loading on normal and emergency ratings. Reliability  
6 issues that relate to voltage, stability, fault withstand, and other performance criteria  
7 require a different proxy.<sup>5</sup> In some situations where a BRP may be comprised of both  
8 flow related and non-flow related upgrades, and where the cost of the flow related  
9 upgrades is much more than the non-flow related upgrades, the flow-based LODF  
10 methodology may be applied to the cost allocation of the whole BRP.

11 **Q. HOW DO YOU RESPOND TO MR. WEBB’S COMMENT THAT UPON**  
12 **“CLOSER EXAMINATION” THE PROJECT 8113 SHOULD BE IN THE GRE**  
13 **ZONE RATHER THAN THE XCEL ZONE?**

14 **A.** Mr. Webb at p. 25 states that “Pterra represents this project (8113) as an Xcel zonal  
15 project with a 69% share to the GRE zone. Upon closer examination of the facilities in  
16 the model, the project is in the GRE zone.” For the Pterra Report, the information on  
17 MTEP BRP project locations was based on information provided by MISO, specifically  
18 MTEP Reports and MISO’s filings with the Commission relating to the LODF-mile  
19 implementation. The specific source for Project 8113 is the Excel file attachment to  
20 MISO’s Informational Filing with the Commission dated August 1<sup>st</sup>, 2016, and modified  
21 on March 17, 2017. A screenshot of the applicable section is shown below where the  
22 geographic location of Project 8113 is indicated as being in ‘XEL’ or Xcel.

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<sup>5</sup> See for example, PJM’s proposed alternatives in “Alternative Approaches to Identification of Artificial Island Project Beneficiaries”, PJM, June 29, 2017.

MTEP14 and MTEP15 Appendix A Complete Baseline Reliability Project List					
A "Y" in the Column O means project would have been eligible for cost sharing under the old methodology					
MTEP Cycle of Approval	Planning Region	Geographic Location by TO Member System	PrjID	Project Name	
A in MTEP15	West	XEL	8113	Ward County 230 kV	C

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Mr. Webb at p. 25 further notes that “Pterra represents (Project 12122) as being located in the GRE zone with a 31% share to the Minnesota Power zone, when it is in fact not a BRP and is located in the Minnesota Power zone.” The Pterra Report based the location of Project 12122 on Appendix D1 of the MISO MTEP17 Report, pp. 12-13, which identified the project as among GRE projects. Regarding Mr. Webb’s notation that the project is not a BRP, that fact was identified in the Pterra Report on pages 5, 6, 8, 9, 46, 56, and 57.

**Q. DOES THIS CONCLUDE YOUR RESPONSIVE TESTIMONY?**

**A.** Yes.

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

**Coalition of MISO Transmission Customers,** )  
**Industrial Energy Consumers of** )  
**America, LS Power Midcontinent, LLC** )  
 )  
**Complainants,** )  
 )  
**Midcontinent Independent System** )  
**Operator, Inc.** )  
 )  
**Respondent** )

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**Docket No. EL20-19-000**

**AFFIRMATION**

I, RICARDO R. AUSTRIA, swear and affirm that the foregoing Direct Testimony was prepared by me or under my direct supervision, and that the statements contained therein are true and correct to the best of my knowledge and belief.

  
\_\_\_\_\_  
Ricardo Austria  
Dated: 06/04/2020  
\_\_\_\_\_