UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Midcontinent Independent System Operator, Inc.	)	**Docket Nos. ER20-857-000 ER20-858-000**
	)	
LSP Transmission Holdings II, LLC Cardinal Point Electric, LLC LS Power Midcontinent, LLC	)	
	)	
v.	)	**Docket No. EL19-79-000**
	)	
Midcontinent Independent System Operator	)	**(Not Consolidated)**

PROTEST AND MOTION TO CONSOLIDATE OF
LSP TRANSMISSION HOLDINGS II, LLC,
CARDINAL POINT ELECTRIC, LLC, LS POWER MIDCONTINENT, LLC,
THE COALITION OF MISO TRANSMISSION CUSTOMERS, AND
THE INDUSTRIAL ENERGY CONSUMERS OF AMERICA

On January 21, 2020, the Midcontinent Independent System Operator, Inc. ("MISO") and certain incumbent MISO transmission owners[1] (collectively, the "Filing Parties") filed essentially the same proposal to revise its Market Efficiency Project rules[2] as the proposal that the Commission rejected in its Order Rejecting Filing.[3] As in the Rejected MEP Filing, the Filing Parties propose to revise the MISO Open Access Transmission, Energy and Operating

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1 The MISO transmission owners joining the filing are referenced in footnote 1 of the filing. For ease of reference the filing will be referred to as the "Refiled Economic Project Filing" or simply the "Filing" and MISO and certain MISO transmission owners as the "Filing Parties."

2 Midcontinent Indep. Sys. Operator, Inc. and the MISO Transmission Owners, "Proposed Revisions to Tariff Module A, Attachment FF and New Attachments FF-7 and FF-8 to Expand and Clarify Economic Project Selection and Cost Allocation," Docket No. ER20-857-000 and ER20-858-000 (Jan. 21, 2020).

3 *Midcontinent Indep. Sys. Oper., Inc.*, 167 FERC ¶ 61,258 (2019)("Order Rejecting Filing"). The prior filing is referenced herein as the "Rejected MEP Filing."

Reserve Markets Tariff ("Tariff") to: (i) lower the voltage threshold for Market Efficiency Projects from 345 kV to 230 kV; (ii) create a new category of Local Economic Projects at voltages between 230 kV and 100 kV that are cost allocated only to a single zone notwithstanding that the project may have regional benefits; and (iii) create a new restriction on competition in the MISO region for so-called immediate need reliability projects ("Immediate Need Reliability Projects").[4] LSP Transmission Holdings II, LLC, Cardinal Point Electric, LLC, and LS Power Midcontinent[5] (collectively, "LS Power"), together with the Coalition of MISO Transmission Customers[6] ("CMTC") and the Industrial Energy Consumers of America[7] ("IECA") (collectively, "LS Power, CMTC, and IECA") request that the Commission again reject this Refiled Economic Project Filing.

The Commission provided clear guidance in its Order Rejecting Filing – if a project has regional benefits, then it is not just and reasonable to allocate the costs of the project solely to the zone where the project is located.[8] Instead of following the Commission's guidance, the Filing Parties refiled their proposal to create a new category of Local Economic Projects that are allocated solely to the zone where the project is located (a proposal that benefits one stakeholder group,

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4 As proposed, an Immediate Need Reliability Project is a project that has a reliability-based need-by date within 36 months of the project's approval by the MISO Board of Directors ("MISO Board"). This exception will be referred to as the "Immediate Need Exception" throughout this filing.

5 LSP Transmission Holdings II, LLC, Cardinal Point Electric, LLC, and LS Power Midcontinent filed on January 29, 2020 a doc-less intervention in Docket Nos. ER20-857-000 and ER20-858-000.

6 The Coalition of MISO Transmission Customers filed on January 24, 2020 doc-less interventions in Docket Nos. ER20-857-000 and ER20-858-000.

7 The Industrial Energy Consumers of America filed on February 7, 2020 doc-less interventions in Docket Nos. ER20-857-000 and ER20-858-000.

8 *Order Rejecting Filing*, 167 FERC ¶ 61,258 at P 56.

incumbent transmission owners).[9] The Filing Parties seek to circumvent the Commission's Order Rejecting Filing by simply not evaluating whether there are regional benefits.[10] As the Filing Parties admit:

> the Commission rejected, in the June 2019 Regional Order, the prior Local Economic Project proposal because it required Local Economic Projects to demonstrate both a regional 1.25-to-1 benefit-to-cost ratio and a local 1.25-to-1 benefit-to-cost ratio for each Transmission Pricing Zone where a Local Economic Project is located. The Commission held that subjecting Local Economic Projects to both of these benefit-to-cost ratios would be inconsistent with the cost causation principle. To reflect this holding and to ensure a better alignment of costs and benefits**, Applicants have revised their Local Economic Project proposal by removing the regional benefit-to-cost ratio requirement**.[11]

If MISO is not required to evaluate regional benefits, those lower voltage regionally beneficial economic projects are not subject to competition and automatically awarded to incumbent transmission owners. Given the proven benefits of competition, the burden of establishing that an exclusion to competition is "just and reasonable" is extraordinarily high, whether there is "stakeholder support" – albeit stakeholder support because of dominating parochial interests – or not. Here, there is simply no legitimate basis for treating projects that are regionally economically beneficial one way if they are at 230 kV and above and similar projects below 230 kV (down to 100 kV), a different way. The failure to justify assigning regionally

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9 This case continues to be a good example of parochial interests dominating discussions in the RTO/ISO stakeholder process. When that happens the right policy determinations take a back seat to horse trading among the parochial interests sufficient to get the required stakeholder support. Those parochial interests are most evident in the proposal to exclude regionally beneficial economic projects between 100 kV to 230 kV from eligibility for the same regional cost allocation as similarly situated projects and to create a new category of projects, Local Economic Projects, which only the local incumbent transmission owners can build.

10 This is the same approach used to keep Baseline Reliability Project cost allocation within single zones. *Complaint of Coalition of MISO Transmission Customers, Industrial Energy Consumers of America, and LS Power Midcontinent, LLC and Request for Fast Track Processing*, filed on January 21, 2020 in Docket No. EL20-19-000.

11 Refiled Economic Filing at 42-43 [emphasis added].

beneficial projects to the incumbent transmission owners directly harms ratepayers because the Refiled Economic Project Filing is unjust, unreasonable, and unduly discriminatory.

To approve the Refiled Economic Project Filing, the Commission must find that it is just and reasonable and nondiscriminatory to (i) exclude projects below 230 kV from the Market Efficiency Project category and (ii) that it is just and reasonable to require 100% local cost allocation for the new category of Local Economic Project even when the project provides regional benefits. The Commission cannot make these findings based on the Refiled Economic Project Filing, particularly where the Local Economic Project category would result in ratepayers in the zone where the project is located paying 100% of the costs of the *regionally* beneficial projects, without the proven benefits of competition, while benefiting ratepayers outside the zone would pay nothing.

On June 5, 2019, LS Power filed a complaint in Docket No. EL19-79-000 ("Economic Project Complaint")[12] arguing that the MISO Tariff is unjust and unreasonable because it fails (1) to have clear criteria and procedures in place for identifying economic enhancements operating below 345 kV and (2) even if projects are identified below 345 kV that would provide market efficiency benefits, the MISO Tariff does not have a just and reasonable method for allocating the costs as they can only move forward as an Other Projects with 100% local cost allocation regardless of beneficiary (*i.e.*, the same cost allocation method that the Commission declared unjust and unreasonable in the Order Rejecting Filing). The Commission should consolidate the Economic Project Complaint proceeding with the Refiled Economic Project Filing proceeding, and grant the Economic Project Complaint. Based on the combined record in

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[12] CMTC filed a doc-less intervention in the Economic Project Complaint Docket No. EL19-79 on June 28, 2019.

the proceedings, the Commission should determine that the just and reasonable rate requires MISO to (1) lower the voltage threshold for Market Efficiency Projects to 100 kV and (2) use the benefit metrics proposed in the Refiled Economic Project Filing to identify and allocate the costs of regionally beneficial economic projects operating between 100 kV and lower than 345 kV.[13]

I. BACKGROUND

This is the second attempt at revising MISO's planning and cost allocation procedures for economically beneficial projects in connection with the Commission's requirement, in a separate complaint proceeding, that MISO "either confirm that the existing [MEP] cost allocation method will apply to MISO's share of the cost of interregional economic transmission projects above 100 kV but below 345 kV that qualify as [MEPs] or to propose tariff revisions to apply a different *regional cost allocation method* for MISO's share of the cost of such projects."[14] In their first attempt to comply, on February 25, 2019, the Filing Parties proposed to lower the voltage threshold for MISO footprint Market Efficiency Projects to 230 kV and to create a new category of economic projects, Local Economic Projects, which operate between 100 kV and less than 230 kV. The Filing Parties also proposed eliminating the twenty percent (20%) postage stamp portion of the cost allocation methodology for Market Efficiency Projects, in conjunction with introducing two new mechanisms to measure economic benefits. Although

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13 *See Calpine Corp, et. al v. PJM*, 163 FERC ¶ 61,236, at P 6, n.9 (2018)(The Commission consolidated a Section 205 and a Section 206 proceeding thereby permitting the Commission to grant the complaint in part and establish a new proceeding to determine the just and reasonable rate). The Commission explained that it "frequently consolidates the record in related proceedings under FPA section 205 and 206" and that it is "particularly appropriate when a rate proposal under FPA section 205 fails to remedy the harm identified under FPA section 206." *Id.* That is precisely the issue here, the Economic Project Complaint identifies the issue that the Refiled Economic Project Filing fails to remedy.

14 *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator and PJM Interconnection, L.L.C.*, 158 FERC ¶ 61,049, at P 51 (2017)[emphasis added].

the new category of Local Economic Projects would be measured for economic benefits under the two new economic benefit measures, costs would be allocated exclusively to the zone where the project is located. Finally, the Filing Parties proposed to introduce for the first time a right of first refusal for Market Efficiency Projects that MISO determined are needed within 3 years to resolve a reliability violation.

Numerous parties protested the 230 kV Market Efficiency Project Threshold and the addition of the Local Economic Project category, asking that the Commission lower the voltage threshold for Market Efficiency Projects to 100 kV.[15] The protests were met with an assertion that it was outside the Commission's authority in the context of ruling on a Section 205 filing, to require a change in the voltage threshold. Although LS Power disagreed with the asserted limitations on Commission action,[16] on June 5, 2019, LS Power filed the Economic Project Complaint arguing that MISO's current planning process for economic projects is unjust and unreasonable because there is not clear criteria or procedures for identifying and evaluating economic projects operating below 345 kV.[17] The Economic Project Complaint also argued that to the extent an economically beneficial project operating below 345 kV moves forward, it is categorized as an "Other Project" and the cost allocation method applicable to such projects is

[15] Comments and Limited Protest of the American Wind Energy Association and Clean Grid Alliance, Docket Nos. ER19-1124-000, ER19-1125-000, and ER19-1156-000 filed on March 27, 2019 at 5; Protest of LSP Transmission Holdings II, LLC, Cardinal Point Electric, LLC, and LS Power Midcontinent, LLC, Docket Nos. ER19-1124-000 and ER19-1125-000 filed on March 27, 2019 at 5-19; Joint Protest of the Protesting Transmission Owners, Docket Nos. ER19-1124-000 and ER19-1125-000 filed on March 27, 2019 at 5-15; Protest of Industrial Customers, Docket Nos. ER19-1124-000 and ER19-1125-000 filed on March 27, 2019 at 6-10.

[16] Motion For Leave To Answer And Answer Of The Midcontinent Independent System Operator, Inc. And MISO Transmission Owners, Docket Nos. ER19-1124-000 and ER19-1125-000 filed on May 10, 2019 at 8-9; Motion For Leave To Respond and Response Of The MISO South Regulators, Docket Nos. ER19-1124-000 and ER19-1125-000 filed on April 11, 2019 at 5, 14-15.

[17] Economic Project Complaint at 10-15.

unjust and unreasonable because all costs are allocated solely to the transmission owner zone where the project is located with no consideration of the project beneficiaries.[18] The Economic Project Complaint urged the Commission to lower the voltage threshold for Market Efficiency Projects to 100 kV with costs allocated to beneficiaries.[19] The Commission has not yet acted on the Economic Project Complaint.

On June 24, 2019 the Commission rejected the Filing Parties' first attempt in its entirety because it found the proposed cost allocation for economic projects operating between 100 kV and less than 230 kV unjust and unreasonable.[20] The Commission found the proposed Local Economic Project category was unjust and unreasonable because it would calculate a project's regional benefits yet ignore those benefits and allocate the costs of a project exclusively to the zone where the project is located.[21] As the Commission explained,

> 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.[22]

Because the Commission rejected the cost allocation for economic projects between 100 kV and 230 kV, it found that it must reject the entire filing.[23]

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18 *Id*. at 15-16.

19 *Id.* at 17-22.

20 *Order Rejecting Filing*, 167 FERC ¶ 61,258 at P 56.

21 *Id.*

22 *Id.* at P 62 (quoting First Economic Filing at 22).

23 *Id.* at P 66.

While the Commission provided guidance on other aspects of the proposal, the Commission expressly acknowledged that it was not addressing "all of the comments and do not address several requests for clarification about specific aspects of Filing Parties' proposals."[24] Instead, the Commission "encourage[d] Filing Parties to consider all the comments submitted in this proceeding as they work on any possible future filing."[25]

In the Refiled Economic Project Filing, the Filing Parties repackaged the same unjust and unreasonable proposal. Rather than revising the unjust and unreasonable cost allocation method for economic projects between 100 kV and 230 kV to recognize that the projects have regional benefits, the Refiled Economic Project Filing proposes to simply ignore that there may be regional benefits and allocate the costs solely to the zone where the project is physically located if the project provides sufficient benefits to that zone. In doing so, the "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"[26] only that they chose not to do so.

II. MOTION TO CONSOLIDATE

LS Power, CMTC, and IECA move the Commission to consolidate the Economic Project Complaint, Docket No. EL19-79- 000, with the Section 205 Dockets, Docket Nos. ER20-857-000 and ER20-858-000. The Economic Project Complaint and the Refiled Economic Project Filing raise common issues of fact and law that warrant the Commission addressing the matters in a common order.[27] The Economic Project Complaint challenges, under Section 206 of the

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[24] *Id.* at P 69.

[25] *Id.*

[26] *Id.* at P 62.

[27] *Sw. Elec. Power Co.*, 164 FERC ¶ 61,059, at P 22 (2018) ("Because of the existence of common issues of law and fact, we grant Minden's motion to consolidate this proceeding with the ongoing proceedings in Docket Nos. ER18-1225-000 and EL18-122-000. Therefore, in order to promote administrative efficiency, we will consolidate these filings for purposes of settlement, hearing,

Federal Power Act, the justness and reasonableness of the existing Tariff's limitation of 345 kV on Market Efficiency Projects.

The Refiled Economic Project Filing does not address the Tariff deficiencies raised in the Economic Project Complaint. As noted above, the Commission already rejected a similar proposal to the Refiled Economic Filing on the grounds that allocating all the costs of a regionally beneficial economic project operating between 100 kV and less than 230 kV only to the zone where it is located was unjust and unreasonable.[28] Rather than propose a new just and reasonable cost allocation for regionally beneficial economic projects below 230 kV, the Filing Parties' propose the same unjust and unreasonable cost allocation except this time they simply refuse to determine whether there are regional benefits. The Filing Parties proposal essentially takes the manner in which economically beneficial projects below 230 kV have moved forward, as Other Projects with all costs allocated to the zone in which the project is physically located and renames it as a Local Economic Project. The Complaint specifically challenges the cost allocation for economically beneficial Other Projects as unjust and unreasonable. Changing the name of the project category does not change this fact.[29]

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and decision."); *Michigan S. Cent. Power Agency*, 156 FERC ¶ 61,115, P 35 (2016) ("We find that the issues that have been raised with respect to the Complaint in Docket No. EL16-77-000 and the Unexecuted Agreement in Docket No. ER16-1986-000 are closely interrelated, and this warrants consideration of the two proceedings jointly for purposes of settlement, hearing, and decision. Consequently, the Commission will consolidate these proceedings for purposes of settlement, hearing, and decision."); *Sw. Power Pool, Inc. Midwest Indep. Transmission Sys. Operator, Inc. Sw. Power Pool, Inc.*, 146 FERC ¶ 61,231, at P 89 (2014) ("Given the common issues of fact and law, we will consolidate these four proceedings for purposes of settlement, hearing, and decision.").

28 *Order Rejecting Filing*, 167 FERC ¶ 61,258 at P 56. Additional precedent can be found in the *NIPSCO Order* where the Commission determined that the failure to have a 100 kV threshold for MISO Market Efficiency Projects is unjust and unreasonable in the context of economically beneficial interregional projects. *NIPSCO Order*, 158 FERC ¶ 61,049.

29 In this regard, the "Local Economic Project" filing is a proposal looking for a problem. It does not address the identified problem, regionally beneficial projects below 230 kV. As for projects below 230 kV that provide **only** local benefits, those projects already can move forward under the

The Commission cannot fully address the Refiled Economic Project Filing without addressing, as an initial matter, whether a voltage threshold of 100 kV for regionally beneficial Market Efficiency Projects is a necessary component of any just and reasonable Tariff, an issue directly raised by the Economic Project Complaint. Based on the foregoing, LS Power, CMTC, and IECA request that the Commission consolidate the Economic Project Complaint and the Refiled Economic Project Filing for resolution in a single comprehensive order.

III. PROTEST

A. The Filing Parties' Proposed Voltage Threshold For Market Efficiency Projects is Arbitrary And Fails To Recognize That Projects Below 230 kV Can Have Regional Benefits

1. There Is Not Substantial Evidence That The 230 kV Threshold Is Just And Reasonable

In their latest proposal, the Filing Parties again propose to lower the voltage threshold for Market Efficiency Projects from 345 kV to 230 kV, the same voltage threshold proposed in the Rejected Filing. LS Power, CMTC, and IECA agree that a lower threshold is beneficial because it "expand[s] the universe of projects that may qualify as a Market Efficiency Project", which in turn "bring[s] additional regional economic benefits to customers."[30] While the Filing Parties do an excellent job justifying lowering the threshold from the current threshold of 345 kV, they provide no justification for why 230 kV is the just and reasonable threshold. The reasons that the Filing Parties propose to lower the voltage threshold to 230 kV also apply to lowering the threshold to 100 kV. It is not sufficient for the Filing Parties to highlight the benefits of lowering the threshold, they must also justify why 230 kV is just and reasonable by explaining why

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Other Project category with the cost allocation proposed. The Filing Parties do not explain why a new category is needed for projects that provide only local benefits.

30 Refiled Economic Project Filing at 20.

economically beneficial projects below 230 kV that have regional benefits should be excluded from the Market Efficiency Project category. Furthermore, if the Filing Parties' goal is to ensure that only projects with regional benefits qualify as Market Efficiency Projects, then the criteria for Market Efficiency Projects already accomplishes that goal by requiring the project have a regional 1.25:1 benefit to cost ratio.[31]

The Filing Parties seek to circumvent the issue by asserting that the threshold is "a compromise solution" and consistent with MISO's "incremental approach to planning and cost allocation."[32] But neither reason is a sufficient justification for a 230 kV threshold that arbitrarily excludes regionally beneficial projects that are under 230 kV. While the Commission has stated a preference for proposals that result from the stakeholder process, it is not a decisive factor because the Commission "must make its own independent assessment that the policy is just and reasonable."[33] Furthermore, the Filing Parties have not explained why an "incremental approach" is necessary here. At this point, the only possible reason is that certain transmission owners do not want economically beneficial projects operating between 100 kV and lower than 230 kV open to competition, which is contrary to Order No. 1000.

It is also important to note that the Filing Parties acknowledged in the Rejected MEP Filing that projects with voltages as low as 100 kV can have regional benefits. In that filing they proposed to measure the regional benefits of economic projects down to 100 kV, but only cost

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31 *See* Tariff, Attachment FF, Section II.B.1(c) (as renumbered in Attachment FF proposed).

32 Refiled Economic Filing at 21.

33 *Pub. Serv. Comm'n of Wisconsin v. FERC*, 545 F.3d at 1062-65 (D.C. Cir. 2008)("while the Commission may give weight to negotiated stakeholder process, it must make its own independent assessment that the policy is just and reasonable."); *see also ISO New England, Inc. & New England Power Pool Participants Comm'n New England Power Generators Ass'n*, 135 FERC ¶ 61,029, at P 41 (2011)(In discussing whether the Commission has to view a multi-part proposal as a single package, the Commission explained that compromises made during the stakeholder process does not substitute for Commission review of the individual parts).

allocate them locally. Thus, the Filing Parties cannot be heard to argue that such projects do not exist or that MISO is incapable of determining regional beneficiaries.

2. MISO's Analysis During The Stakeholder Process Demonstrated That Economic Projects Between 230 kV and 100 kV Have Regional Benefits

The only attempt at a justification to be found in the Refiled Economic Filing is in Mr. Moser's testimony where he argues that the voltage threshold is appropriate because "projects operating at a voltage below 230 kV are *less likely* to provide benefits that are truly regional in scope."[34] Mr. Moser's statement thus concedes that there are projects operating at a voltage below 230 kV that have regional benefits. Indeed, as discussed below, MISO's own analysis, prepared during the stakeholder process, identified projects operating below 230 kV that benefit more than one zone.

LS Power highlighted the following examples in its earlier protest and the examples remain relevant to the Refiled Economic Filing. At the August 2016 Regional Expansion Criteria and Benefits Working Group ("RECBWG") meeting, MISO presented examples of the Adjusted Production Cost metric applied to sub-345 kV economic projects. One "key takeaway" from the analysis was that "[b]enefit distribution is more dependent on congestion and project location than the voltage level."[35] All four examples analyzed were below 230 kV, and all four examples provided Adjusted Production Cost benefits to more than one transmission pricing zone.[36]

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34 Prepared Testimony of Jesse Moser on Behalf of MISO filed in this proceeding at page 34 lines 1-2 ("Moser Testimony")[emphasis added].

35 MISO Presentation, Examples of APC Metric Applied to Sub-345kV Economic Projects at slides 2, 11 available at https://cdn.misoenergy.org/20160816%20RECBWG%20Item%2002b%20Analysis%20of%20Sub-345%20kV%20Economic%20Projects90177.pdf (dated Aug. 16, 2016, revised Aug. 19, 2016).

36 *Id.* at Slides 5, 7, 9, and 10.

Of particular note in that presentation is Example 3, a 161 kV project that provides benefits in parts of **8 states!**[37] This is not an anomaly or just hypothetical project results. In MTEP18, MISO reviewed four project solutions related to congestion in the Wabaco area. MISO determined that a 161 kV project would provide "a 6.79 benefit-to-cost ratio to MISO and 1.53 to local [transmission pricing zone] TPZ . . .."[38] Although the regional benefits are four times higher than the "local" benefits, the Refiled Economic Project Filing would prohibit a similar project from becoming a Market Efficiency Project and instead only allow it to be designated a "Local Economic Project" because the benefits in the local zone are above 1.25:1. As such, its cost allocation would be exclusively to the local transmission pricing zone notwithstanding that it receives only a fraction of the benefits of consumers outside the zone who would pay nothing.[39]

Similarly, MISO provided analysis of a 161 kV project that would fully relieve congestion on the Wilson to Matanzas and BR Tap to Paradise lines. MISO determined that the project would achieve a 3.28 benefit-to-cost ratio to the MISO footprint, with a 1.73 benefit-to-

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37 *Id*. at Slide 8 [emphasis added].

38 MISO 2018 Transmission Enhancement Plan at 100, available at https://cdn.misoenergy.org/MTEP18%20Full%20Report264900.pdf.

39 The United States Court of Appeals for the District of Columbia's ("D.C. Circuit) decision in *Old Dominion Elec. Coop. v. FERC,* 898 F.3d 1254 (D.C. Cir. 2018), is particularly relevant to the question of whether a physical location-based cost allocation is just and reasonable. In that decision, the D.C. Circuit was presented with a cost allocation method that allocated all costs of an entire category of projects exclusively to the zone in which the project is physically located irrespective of the fact that the benefits of some projects flowed to zones other than where the project is located. In one case, 43% of the benefits flowed to zones other than where the project was located. The Court found that this "involves a wholesale departure from the cost-causation principle, which would 'shift a grossly disproportion share of [the] costs' of the high-voltage projects into a single zone.'" *Id.* at 1261. The referenced examples demonstrate that the same mismatch is likely to occur if all economically beneficial projects operating between 100 kV and 230 kV are automatically allocated to the zone in which the project is located.

cost ratio to the local transmission pricing zone.[40] The regional benefit is almost double the local benefits. As with the project above, the Refiled Economic Project Filing would categorize such a project as a "Local Economic Project," leaving one transmission pricing zone to pay for a project that clearly benefits the other regional consumers.

Finally, at the September 2017 RECBWG, MISO Staff presented analysis of fourteen theoretical projects.[41] Six of the projects were below 230 kV but above 100 kV, and all showed benefits to more than one transmission pricing zone. Example One was to build a new 115 kV line to S. Natchez. Over time, the project would benefit six out of ten Local Resource Zones.[42] Example Eight, a second sub-230 kV project, would benefit four of ten Local Resource Zones over time.[43]

The above examples demonstrate that the assertion in the Refiled Economic Project Filing that projects operating below 230 kV have primarily local benefits[44] is unsupported and misplaced. Could they have "primarily" local benefits? Of course. But such projects could also have significant regional benefits. Refusing to measure regional beneficiaries does not change the fact that such beneficiaries exist. The Refiled Economic Filing fails to support the effort to distinguish above and below 230 kV projects through any legitimate justification; on the

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40 MISO 2018 Transmission Enhancement Plan at 106, available at https://cdn.misoenergy.org/MTEP18%20Full%20Report264900.pdf.

41 MISO, Project Benefit Distribution Presentation, available at https://cdn.misoenergy.org/20170928%20RECBWG%20Item%2006%20Project%20Benefit%20Distribution90349.pdf (Dated Sept. 28, 2017).

42 *Id.* at Slides 5-7.

43 *Id.* at Slides 20-22.

44 LS Power disputes that a project's "primary" benefits should play a role in the determination of the appropriate cost allocation. However, given that MISO's own examples, such as showing regional benefits to 8 states or significantly higher regional benefits than local, show that the Filing Parties' assertion is false, it is unnecessary to debate the reliance on "primary" benefits as a cost allocation metric versus allocating costs based on actual benefits.

contrary, the Filing Parties appear to create an artificial distinction in order to prevent competition for regionally beneficial economic projects below 230 kV.

Under current Commission rules, allocating the costs to the zone where the project is physically located allows regionally beneficial economic projects to be directly assigned to incumbent transmission owners, bypassing MISO's Competitive Developer Section Process.[45] Allowing creation of an artificial distinction to permit bypassing the Competitive Developer Selection Process by ensuring that the costs of economic projects below 230 kV are not allocated outside of a transmission pricing zone where the project is located[46] is not only detrimental to ratepayers because the benefits of competition are denied, it violates the Commission's cost causation principles.

3. Commission Precedent And Experience In Other Regions Demonstrates That Economic Projects Operating Lower Than 230 kV Can Provide Regional Benefits

The Commission has previously found that projects operating at 230 kV or lower can have regional benefits. In 2013, Northern Indiana Public Service Company ("NIPSCO") filed a complaint against MISO and PJM arguing that congestion along the MISO-PJM seam was not being addressed as viable transmission additions were not being built. NIPSCO argued that at

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45 Under Order No. 1000, "if any costs of a new transmission facility are allocated regionally or outside of a public utility transmission provider's retail distribution service territory or footprint, then there can be no federal right of first refusal associated with such transmission facilities . . .." Order No. 1000-A, 139 FERC ¶ 61,132 at P 430.

46 Of note, this is the same cost allocation approach that MISO and its incumbent transmission owners took in response to Order No. 1000 with respect to Baseline Reliability Projects, resulting in $4.198 billion in transmission additions being excluded from competition based exclusively on a manufactured cost allocation methodology. The level of Baseline Reliability Projects excluded from competition was established from MISO MTEP reports for 2013-2018. For MTEP 2013-2017 *see*, https://www.misoenergy.org/planning/planning-test/mtep-2017/#t=10&p=0&s=FileName&sd=desc. For MTEP 2018 *see* https://www.misoenergy.org/planning/planning-test/mtep-2018-test-related-docs/ .

least part of the barrier to needed transmission solutions getting built were the regions' voltage and cost restriction thresholds for economic projects.

The Commission agreed with NIPSCO, finding that:

> the Quick Hit Analysis has validated that many identified interregional economic transmission projects that are less than 345 kV and cost less than $5 million may nevertheless provide benefits to each region and should therefore not be automatically excluded from consideration.[47] We find that a majority of the identified Quick Hit projects are rated below 345 kV (i.e., 138/161 kV) and cost less than $5 million (with several costing only several hundred thousand dollars).[48]

The Commission thus required MISO to "revise its tariff to revise the Market Efficiency Project thresholds that apply to qualify as an interregional economic transmission project by (1) *lowering the minimum voltage thresholds to 100 kV* and (2) removing the $5 million minimum cost requirement."[49] If these economic projects that operate primarily between 230 kV but above 100 kV can have interregional benefits, it is logical to conclude that there are economic projects that operate below 230 kV that provide regional benefits.

A review of other regional transmission organizations ("RTOs") and independent system operators ("ISOs") also reveals that the voltage threshold for Market Efficiency Projects, both current and proposed, stands out as an anomaly. NYISO does not have a voltage threshold for

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47 *N. Ind. Pub. Serv. Co. v. Midcontinent Indep. Sys. Operator*, 155 FERC ¶ 61,058, at P 131 (2016). During the proceeding, MISO, PJM, and stakeholders developed the so-called, Quick Hit Analysis, which identified near-term interregional economic projects needed to remedy congestion along the MISO-PJM seam.

48 *Id*.

49 *Id*. (emphasis added). While the Commission affirmed on rehearing that MISO must clarify that interregional economic transmission projects operating above 100 kV, but below 345 kV, cannot qualify as Market Efficiency Projects, the Commission left open the issue of what regional cost allocation method should apply to MISO's share of the cost of an interregional economic transmission project operating above 100 kV but below 345 kV.

economic projects.[50] CAISO likewise has no voltage threshold for projects to qualify as market efficiency projects.[51] ISO-NE uses a 115 kV voltage threshold for its version of regional economic projects, Market Efficiency Transmission Upgrades.[52] While SPP does not have a specific category of economic projects, it allocates the costs of projects selected in its regional plan based on voltage. Projects above 100 kV but below 300 kV are allocated one third regionally and two thirds locally, while only a project below 100 kV is allocated to the zone in which it is located.[53]

PJM also does not have a voltage threshold for economic projects and, notwithstanding reformation of aspects of its planning process, has declined to propose one. In 2016, PJM proposed to exempt from its competitive solicitation process certain reliability violations on transmission facilities that operate below 200 kV.[54] However, PJM specifically did not apply this threshold to market efficiency or public policy projects because "of the unique nature of market efficiency and public policy needs."[55] In addition, in 2018, PJM created a new task force

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50 NYISO OATT, Attachment Y, § 31.5.4.3.

51 A number of economic projects in CAISO demonstrate that projects below 230 kV can provide regional benefits. For example, in its current transmission planning process, CAISO is recommending that the Giffen Line Reconductoring Project, which would reconductor an existing 70 kV line, proceed as an economic-driven project. CAISO's analysis showed that the project would have an estimated cost of $5 million, and a $7 million annual benefit. CAISO Draft 2018-2019 Transmission Plan Presentation, at slides 25-27 (presented Feb. 14, 2019), available at http://www.caiso.com/Documents/Presentation-2018-2019TransmissionPlanningProcessMeeting-Feb14-2019.pdf.

52 *ISO New England Inc.*, 143 FERC ¶ 61,150, at P 354 (2013).

53 *Sw. Power Pool, Inc.*, 144 FERC ¶ at P 61,059, n.10 (2013).

54 PJM Transmittal, filed on April 1, 2016 in Docket No. ER16-1335-000, at 7-10.

55 *Id*. at 7, 12-13 ("In recognition of the unique nature of market efficiency and public policy needs, PJM proposes that the voltage threshold will be limited to reliability projects.").

to discuss challenges and potential improvements to the market efficiency process. The task force did not consider establishing a minimum voltage threshold for market efficiency projects.[56]

B. The Commission Must Reject The Proposal Because the Cost Allocation for Economic Projects Below 230 kV Remains Unjust And Unreasonable

In the Refiled Economic Filing the Filing Parties again propose to allocate the costs of economic projects operating between 100 kV and lower than 230 kV solely to the zone where the project is located. To qualify as a "Local Economic Project", the Filing Parties propose that the project have a 1.25:1 benefit-to-cost ratio in the zone where the project is located. MISO is to measure the benefits to the zone where the project is located using the same benefit metrics it uses to identify and calculate the benefits to beneficiaries of Market Efficiency Projects. The Filing Parties provided no justification for why it cannot use the metrics to identify beneficiaries of economic projects operating between 100 kV and lower than 230 kV other than an unsupported and generic assertion that lower voltage projects have local benefits. The cost causation principle, however, demands more. If MISO has the technical capability to do so, and there is evidence that economic projects operating between 100 kV and lower than 230 kV have regional benefits (see above discussion), then the Commission must reject the Filing Parties' proposal to allocate the costs of the economic projects operating between 100 kV and lower than 230 kV to the zone in which the project is located.

As a starting point, the proposal in the Refiled Economic Project Filing is the same cost allocation method that the Filing Parties proposed in the Rejected MEP Filing. Numerous parties opposed the proposed cost allocation method arguing (i) that the Filing Parties had not

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56 PJM Regional Transmission Expansion Plan Market Efficiency Process, Problem Statement & Issue Charge, posted on January 25, 2018, available at https://www.pjm.com/-/media/committees-groups/task-forces/mepetf/postings/market-efficiency-process-problem-statement-and-issue-charge.ashx?la=en.

demonstrated that economic projects operating between 100 kV and lower than230 kV will have exclusively local benefits and (ii) therefore the proposal does not allocate the costs appropriately among the beneficiaries of the projects.[57] The Commission agreed and rejected the Filing Parties' proposal. The Commission recognized that because MISO could determine the beneficiaries, MISO must allocate the costs based on who benefits. The Commission first set forth the applicable standard of allocating costs based on who benefits, *i.e.*, who is causing the costs to be incurred, stating, "[t]he cost causation principle requires that "all approved rates reflect to some degree the costs actually caused by the customer [that] must pay them"[58] and adding, "[t]he D.C Circuit has explained that it evaluates compliance with the cost causation principle by "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party."[59]

Because MISO could determine the applicable beneficiaries, the Commission found that it would be inconsistent to then allow MISO to allocate the costs solely to the zone where the project is located. To do otherwise, the Commission concluded, would be inconsistent with the cost-causation principle. The Commission determined that while the Filing Parties

> have proposed metrics that will identify regional benefits for Local Economic Projects [ ] for the purpose of imposing its preferred cost allocation method, Filing Parties [MISO] will ignore the results of its regional benefit metrics analysis in order to allocate the costs only to the Transmission Pricing Zone(s)

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[57] Protest of LSP Transmission Holdings LL, Cardinal Point Electric, LLC and LS Power Midcontinent, LLC, filed March 27, 2019 in Docket No. ER19-1124 at 19-25. LS Power also noted that the exclusively local cost allocation circumvents MISO's competitive process, i.e., projects that should be subject to competition because the project has regional benefits, i.e., benefits more than one zone, will not be subject to competition.

[58] *Order Rejecting Filing*, 167 FERC ¶ 61,258 at P 57 (*quoting Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004)).

[59] *Id.*

> where the project is located. This combination of elements within the proposal therefore is inconsistent with the cost-causation principle.[60]

In response to the Commission's findings in the Order Rejecting Filing, the Filing Parties propose to solve the Commission's concerns by refusing to fully determine who benefits, instead looking only at one potential beneficiary in the zone where the project is located. If the project meets the 1.25-to-1 benefit-to-cost ratio in the zone where the economic project operating below 230 kV project is located, then MISO cannot look any further in determining beneficiaries and must allocate 100% of the costs to that zone. That solution is inconsistent with the Order Rejecting Filing.

The Refiled Economic Filing is also inconsistent with case law requiring that the allocation of costs must be roughly commensurate with the benefits received.[61] The Seventh Circuit has required that the Commission when approving cost allocation methods must have an "articulable and plausible reason to believe that the benefits are at least roughly commensurate with" the costs allocated.[62] Applied here, that means that MISO must review who benefits because as the Commission said in the Order Rejecting Filing, it is "not authorized to approve a pricing scheme that requires a group of utilities to pay for facilities from which its members derive no benefits or benefits that are trivial in relation to the costs sought to be shifted to its members."[63] Similarly, in this Refiled Economic Project Filing, the Commission cannot look the other way and approve the Filing Parties' proposal to allocate 100% of the costs to the zone where the under 230 kV economic project is located when the Commission and MISO know (or

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60 *Id.* at P 63.

61 *Illinois Commerce Com'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009).

62 *Id.*

63 *Order Rejecting Filing*, 167 FERC ¶ 61,258 at P 59 (quoting *Illinois Commission v. FERC*, 576 F.3d at 476).

can easily know) if other zones benefit.[64] In accordance with precedent, the basis for an "articulable and plausible reason to believe that the benefits are at least roughly commensurate with" the costs allocated cannot be that the decision was made not to look for such benefits.

C. The Filing Parties Have Not Shown That The Proposed Immediate Need Reliability Exception Is Just And Reasonable And Not Unduly Discriminatory Or Preferential

The Commission should reject the Filing Parties' proposal to incorporate a new right of first refusal for Market Efficiency Projects if the Market Efficiency Project would also resolve a reliability violation needed within 36 months. As a starting point, the Filing Parties have not presented any evidence that an exception is warranted and structured to identify projects that are truly needed in a short time frame to meet a reliability need. The Filing Parties assert that, with a lower voltage threshold, there may be one project per MTEP cycle with a short-lead time; however, the Filing Parties provide no information about the projects they identified that led them to this conclusion nor shown that the needs could not be addressed by operational measures that either resolve the need or extend the need-by date.[65] Under the Filing Parties' proposal, if a project is needed with 36 months to solve a reliability need, then MISO will *automatically* designate the transmission owner where the project is located to develop, own, and operate the

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[64] Filing Parties propose to identify beneficiaries of Market Efficiency Projects based on the sum of the following benefit metrics: Adjusted Production Cost Savings, Avoided Reliability Project Saving, and the MISO-SPP Settlement Agreement Cost Saving. *See* Tariff, Attachment FF, Section VII.B. (as renumbered in Attachment FF proposed). The Filing Parties propose to use the *same* metrics to identify benefits of economic projects that operate between 100 kV and less than 230 kV, *i.e.,* Local Economic Projects, the only difference being that unlike Market Efficiency Projects, MISO will not use these benefits metrics. If, using these metrics, the zone in which the Local Economic Project is physically located exceeds the 1.25-to-1 benefit-to-cost ratio, then all of the costs will be allocated to that zone regardless if the same metrics show that other zones benefit.

[65] Refiled Economic Filing at 30, n.134.

Market Efficiency Project.[66] Only after MISO has designated the project to the transmission owner will it post for stakeholder comment (1) an explanation of the reliability need and (2) what other transmission and non-transmission alternatives MISO considered but rejected as insufficient.[67] If there is a dispute over a project's designation as an Immediate Need Reliability Project, the Filing Parties propose that the transmission owner will continue to move forward with development and construction.[68]

The Filing Parties have not shown that the "need date," as opposed to the expected in-service date, is the right measure of whether a project is needed in a short-time frame. There have been a number of instances in other regions where a project has been designated as an "immediate need" project, with a "need" date of the day of the designation or two years out, notwithstanding that *no developer*, including the incumbent, can conceivable meet the "need" date.

There are numerous operational actions that transmission providers can take that would allow sufficient time to conduct a competitive solicitation process and complete the Market Efficiency Project without the need to address the reliability issues "immediately." Allowing MISO to bypass potential operational actions that would extend the need for a solution would be akin to allowing RTOs and ISOs to always issue a Reliability Must Run agreement to a generator even though there may be other means to maintain reliability that are less costly and within the

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66 *See* Tariff, Attachment FF, Section VIII.A.3 (as renumbered in Attachment FF proposed). While the proposed exception requires MISO to describe the alternatives it considered, there is no information about how MISO will determine whether a transmission or non-transmission alternative could solve the need more efficiently or cost-effectively.

67 *Id*. at Section VIII.A.3.1(a). It also is problematic that MISO intends to designate the project before permitting stakeholders to comment on whether the need is immediate and whether there are alternatives.

68 *Id.* at Section VIII.A.3.2.

competitive market. As proposed, the Immediate Need Reliability Exception is not structured to ensure that the exception is used as a last resort.

In addition, as the Filing Parties admit, they modeled their exception on the ones that are currently under investigation by the Commission.[69] Late last year the Commission opened a show cause proceeding to determine whether the exception remains just and reasonable.[70] The Commission was concerned that the exception was not being used in limited circumstances as intended and solicited comments on whether "additional conditions or restrictions on the use of the exemption for immediate need reliability projects are necessary to ensure that application of the exemption is limited to appropriately balance the above-noted interests with respect to promoting competition for transmission development and avoiding delays that could endanger reliability."[71] Given that the Commission is investigating the exception and whether changes are necessary, it is simply premature for the Commission to approve an immediate need exemption in MISO planning process until it determines whether the exception is just and reasonable and, if so, whether any refinements are necessary to ensure that the exception is not abused.[72]

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69 Refiled Economic Project Filing at 32.

70 *ISO New England Inc., et al.*, 169 FERC ¶ 61,054 (2019) ("Show Cause Order").

71 *Id.* at P 15.

72 LSP Transmission Holdings II, LLC urged the Commission to consider several reforms to the exception as implemented in ISO-NE, PJM, and SPP. *See* Response of LSP Transmission Holdings II, LLC, filed in Docket No. EL19-90-000 on January 27, 2020; Response of LSP Transmission Holdings II, LLC, filed in Docket No. EL19-91-000 filed on January 27, 2020; Response of LSP Transmission Holdings II, LLC, filed in Docket No. EL19-92-000 on January 27, 2020.

D. The Commission Should Grant The Economic Project Complaint And Establish The Just And Reasonable Rate Based On The Combined Record In The Refiled Economic Project Filing And Economic Project Complaint

The Economic Project Complaint highlights a flaw in MISO's current planning process – there are not clear criteria and procedures for identifying and evaluating regionally beneficial economic projects that operate between 100 kV and below 345 kV. Instead, to the extent these projects are identified at all, they are categorized as "Other Projects."[73] Other Projects are part of the "Bottoms Up" component of MISO's planning process in which individual transmission owners identify the project and MISO studies whether the addition would harm the transmission system.[74] Even when these projects are identified, there is no requirement that they move forward through the planning process as they are planned by the transmission owner and not MISO. This is a significant hole in MISO's current planning process as there is a significant amount of transmission facilities operating below 345 kV in the MISO footprint.[75] As discussed above, however, the Refiled Economic Project Filing fails to address the deficiency.

Even if economically beneficial projects below 345 kV are identified and move forward through the planning process, the cost allocation method for Other Projects allocates all costs to the zone where the project is located. This is inconsistent with the Commission's cost causation principle as explained in the Order Rejecting Filing.[76] The lack of a just and reasonable cost

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[73] The MISO Tariff defines "Other Projects" by exclusion. Attachment FF, Section III.A.2.k. ("Other Projects: Unless otherwise agreed upon pursuant to Section III.A.2.a. of this Attachment FF, the costs of Network Upgrades that are included in the MTEP, but do not qualify as Baseline Reliability Projects, New Transmission Access Projects, Targeted Market Efficiency Projects, Market Efficiency Projects, or Multi-Value Projects shall be eligible for recovery pursuant to Attachment O of this Tariff by the Transmission Owner(s) and/or ITC(s) paying the costs of such project, subject to the requirements of the ISO Agreement.").

[74] Economic Project Complaint at 13-14.

[75] *Id.* at 13.

[76] *Order Rejecting Filing*, 167 FERC ¶ 61,258, at PP 56-64.

allocation method that allocates costs to beneficiaries for economically beneficial projects below 345 kV may hamper the identification and development of these projects because that a transmission owner will choose not to move forward with a project from which it may receive some limited benefits while a neighboring zone may receive substantial benefits.[77]

The Commission rejected the first attempt, the Rejected MEP Filing, and should reject the second attempt, this Refiled Economic Project Filing. The Filing Parties again failed to propose a just and reasonable cost allocation method for regionally beneficial projects operating between 100 kV and below 230 kV and included other unjust and unreasonable components in the Refiled Economic Project Filing. The Commission should not allow additional delay and should act by granting the Economic Project Complaint and establishing a just and reasonable rate based on the combined records in this proceeding and the Economic Project Complaint proceeding. To address the lack of clear criteria and procedures for regionally beneficial economic projects, the Commission should require MISO to lower the voltage threshold for Market Efficiency Projects to 100 kV. The Market Efficiency Project criteria can be used to identify and evaluate regionally beneficial economic projects operating between 100 kV and lower than 345 kV. As for a just and reasonable cost allocation method, the Commission should require MISO to use the benefit metrics as proposed in the Refiled Economic Project Filing – Adjusted Production Cost Savings, Avoided Reliability Project Savings, and MISO-SPP Settlement Agreement Costs – to identify and allocate the costs of the project to their beneficiaries.

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[77] Economic Project Complaint at 16.

IV. CONCLUSION

For the foregoing reasons, LS Power, CMTC, and IECA request that the Commission (1) consolidate Docket No. EL19-79- 000 with Docket Nos. ER20-857-000 and ER20-858-000 for resolution in a single comprehensive order; (2) grant relief consistent with this Protest and the relief sought in the Complaint in Docket No. EL19-79-00; and (3) reject the Section 205 filings in Docket Nos. ER20-857-000 and ER20-858-000 because the Filing Parties have not demonstrated the proposed cost allocation and Tariff revisions to be just and reasonable.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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

Dated at Washington, DC this 11th day of February 2020.

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