

**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

REQUEST FOR REHEARING

Pursuant to Section 313 of the Federal Power Act (“FPA”)¹ and Rule 713 of the Federal Energy Regulatory Commission’s (“Commission”) Rules of Practice,² the Coalition of MISO Transmission Customers, the Industrial Energy Consumers of America, and LS Power Midcontinent, LLC (collectively “Complainants”), Request Rehearing of the Commission’s Order Denying Complaint issued July 28, 2020.³ In support of the request for rehearing the Complainants state as follows:

I. SUMMARY OF ERRORS IN THE COMPLAINT DENIAL ORDER

The Commission’s Complaint Denial Order appears to be based on the unsupported premise that the Commission’s obligation to ensure just and reasonable rates is a ‘most of the time’ standard. There is no precedent to support such a laissez-faire approach to the Commission’s obligations under the Federal Power Act. Instead, the Federal Power Act requires

¹ 16 USC § 8251 (2020),

² 18 C.F.R. § 385.713 (2019).

³ *Coalition of MISO Transmission Customers et al. v Midcontinent Independent System Operator, Inc.*, 172 FERC ¶ 61,099 (2020)(“Complaint Denial Order”).

that the Commission address situations brought to its attention where the rates are unjust and unreasonable. The Complaint herein is exactly such a situation: the Commission was presented with un rebutted evidence that the Midcontinent Independent System Operator, Inc.’s (“MISO”) cost allocation methodology for Baseline Reliability Projects⁴ produces unjust and unreasonable rates in numerous circumstances. The Complaint Denial Order did not address the substance of the evidence but instead reverted to statistics that suggest that the current location-based, non-quantitative methodology gets cost allocation mostly right, most of the time, and therefore meets the Commission’s statutory standard of establishing just and reasonable rates. The Complainants did not deny that for many, or even most, Baseline Reliability Projects “most” of the benefits are local. Instead, the Complainants established that, under the same methodology the Commission used to support its statistical most of the time determination, the “spillover of benefits to other zones is [more than] modest”⁵ for numerous Baseline Reliability Projects. That “spillover” of benefits to other zones ranged from 28% to 100% of the benefits using a Commission accepted quantitative methodology.

Rather than affirmatively address the evidence presented in the Complaint, as further supported through the Answer of Complainants,⁶ the Complaint Denial Order relies on the unsupported conclusion that Baseline Reliability Projects are local projects because they address reliability issues on an individual transmission owner’s facilities and that therefore the MISO mandated local cost allocation is appropriate. This conclusion is inconsistent with Commission precedent on the development of Baseline Reliability Projects, ignores the interconnected nature

⁴ In certain quoted material Baseline Reliability Projects are referenced as “BRPs”.

⁵ *MISO Transmission Owners v. FERC*, 819 F.3d 329, 336 (7th Cir. 2016).

⁶ The Commission accepted the Complainants’ Answer as assisting in its decision-making. Complaint Denial Order at P 78.

of the transmission grid, and relies on faulty circular reasoning. Even if the assertion were correct, however, the planning reason for a transmission addition offers no basis for ignoring cost causation principles.⁷ The Commission determination regarding the planning reason for Baseline Reliability Projects ignores cost causation precedent that prohibits generic location-based cost allocation simply based on the planning criteria leading to development of the project.

In reaching its conclusion to deny the Complaint, the Commission failed to distinguish between consideration of whether the Complainants provided sufficient evidence to meet the threshold for a Section 206 determination that the existing rate is unjust and unreasonable with respect to certain specified projects and therefore violates the Federal Power Act and consideration of whether the Commission agreed that the Complainants' proposed remedy to address that violation is the appropriate one. The Commission ignored unrebutted evidence that the existing location-based cost allocation restrictions for Baseline Reliability Projects results in unjust and unreasonable cost allocation determinations for a subset of Baseline Reliability Projects. Under Section 206 that unrebutted evidence requires the Commission to act. Although the Complainants proposed application of the line outage distribution factor ("LODF") as the appropriate replacement rate for all Baseline Reliability Projects, the Commission could establish any just and reasonable replacement rate. What the Commission must do, however, is act.

Finally, the Commission erred in failing to address the evidence that MISO, in violation of Order No. 1000,⁸ lacks a regional cost allocation methodology for reliability projects. Order

⁷ *Old Dominion Electric Cooperative v. FERC*, 898 F.3d 1254, 1262-63 (D.C. Cir. 2019) ("*ODEC v. FERC*").

⁸ *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, FERC Stats. & Regs. ¶ 31,323 (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). Order No. 1000 cite

No. 1000 specifically prohibited regions from excluding a particular type of transmission project from an opportunity for regional cost allocation.⁹ The Commission accepted the change in Baseline Reliability Project cost allocation in 2013, based on the assertion by MISO and the MISO Transmission Owners that the Multi-Value Project category would provide that regional cost allocation methodology for reliability based transmission projects, such that it was unnecessary to continue regional cost allocation for Baseline Reliability Projects. The Commission acknowledged in the Complaint Denial Order the undisputed truth — no Multi-Value Projects have been advanced in MISO in the six (6) years since the Commission’s acceptance of the predictive assertion.¹⁰ Although the parties defending the Baseline Reliability Project cost allocation methodology provided a myriad of excuses for the failure of the 2013 prediction to materialize, they provided no proof that additional Multi-Value Projects will arise, leaving MISO without a regional cost allocation methodology for reliability projects, a violation of Order No. 1000. The Complaint Denial Order failed to address this issue, instead addressing only the possibility for additional market efficiency projects, which are not reliability projects for purposes of cost allocation and were not considered the regional cost allocation for reliability projects relied on by the Commission in 2013.¹¹

In short, the Complaint Denial Order fails the standards for a Commission order to withstand judicial review because the Commission did not engage in reasoned decision-making, did not consider the evidence before it, did not respond to the arguments made, did not properly apply Commission and judicial precedent, and did not appropriately distinguish evidence

⁹ Order No. 1000 at P 690.

¹⁰ Complaint Denial Order at P 89.

¹¹ *Midwest Indep. Transmission Sys. Operator, Inc. and the MISO Transmission Owners, et al.*, 142 FERC ¶ 61,215 (2013) at P 519 (“BRP Cost Allocation Order”).

meeting the threshold for Commission action on a Section 206 complaint and the subsequent remedial action to be taken after the Commission has declared a rate unjust and unreasonable. The Commission should grant rehearing of the Complaint Denial Order, grant the Complaint, and determine the appropriate cost allocation methodology for Baseline Reliability Projects. If the Commission does not select the remedy proposed by Complainants, application of LODF across all Baseline Reliability Projects, the Commission can, and should, determine an appropriate alternative cost allocation methodology that addresses the deficiencies raised and which is supported by reasoned decisionmaking.

II. SPECIFICATION OF ERRORS

Pursuant to Rule 713(c)(1) of the Commission's Rules of Practice and Procedure, the Complainants identify the following specification of errors:

1. The Commission erred by disregarding substantial record evidence that MISO's Baseline Reliability Project local cost allocation methodology fails to allocate costs in a manner consistent with cost causation for a number of Baseline Reliability Projects for which the spillover of benefits to other zones is more than modest.
2. The Commission erred in determining that the issues Baseline Reliability Projects are designed to address are specific and localized, thus warranting a mandated local cost allocation. Baseline Reliability Projects address an array of reliability issues caused by the interconnected grid that does not distinguish the causation for the issues by geographic zone.
3. The Commission's decision that Baseline Reliability Projects are planned to address local reliability issues was arbitrary and capricious because it was inconsistent with the basis on which the Commission accepted BRPs in the first instance.
4. The Commission's decision was arbitrary and capricious as it applied cost causation principles in a manner inconsistent with prior precedent to maintain a local cost allocation methodology that prohibits regional cost allocation notwithstanding regional benefits.
5. The Commission determination was arbitrary and capricious because it failed to address the evidence that reliability based projects in MISO have no effective regional cost allocation methodology and MISO's Tariff therefore violates Order No. 1000. The Complaint Denial Order failed to meet the requirements of the

Commission's commitment to monitor the results of MISO's regional planning process to ensure that the Commission's expectations for future planning for regional reliability projects met the requirements on which it accepted MISO's exclusive reliance on Multi-Value Projects as the only regional cost allocation methodology necessary for compliance with Order No. 1000 related to reliability projects.

III. STATEMENT OF ISSUES

Pursuant to Rule 713(c)(2) of the Commission's Rules of Practice and Procedure, the Complainants identify the following issues to be addressed:

1. The Commission disregarded or failed to address record evidence that for a number of Baseline Reliability Projects the spillover of benefits was more than the modest spillover of benefits relied on by the Commission as acceptable and that the unrebutted evidence demonstrated that the benefits occurring outside the location-based cost allocation zone were substantial. 5 U.S.C. § 706(2)(E) ('The reviewing court shall . . . hold unlawful and set aside . . . findings . . . found to be . . . unsupported by substantial evidence'); *Natural Res. Def. Council, Inc. v. US EPA*, 822 F.2d 104, 111 (D.C. Cir. 1987)(an agency's action is "arbitrary and capricious" if it "ignores important arguments or evidence"); *Cosmopolitan Broad Corp. v. FCC*, 581 F.2d 917, 930-31 (D.C. Cir. 1978)(an agency cannot ignore evidence before it); *Motor Vehicle Mfrs. Ass'n v. State Farm Mutual Automobile Ins. Co.*, 463 U.S. 29, 43, 103 S.Ct. 2856, 2866, 77 L.Ed.2d 443 (1983) (quoting *Burlington Truck Lines, Inc. v. United States*, 371 U.S. 156, 168, 83 S.Ct. 239, 246, 9 L.Ed.2d 207 (1962))(an agency must "articulate a satisfactory explanation for its action including a 'rational connection between the facts found and the choice made.'"); *Genuine Parts Co. v. Environmental Protection Agency*, 890 F.3d 304, 311-15 (D.C. Cir. 2018)(finding the Environmental Protection Agency relied on evidence that did not respond to the petitioners' argument and ignored evidence contradicting its position).
2. The Commission's determination that Baseline Reliability Projects are designed to address specific and localized issues is arbitrary and capricious and not the result of reasoned decision-making. The Commission must support its decisions by substantial evidence and the Commission's factual rationale must not be arbitrary and capricious. Administrative Procedure Act, 5 U.S.C. § 706(2)(A), (E). The Commission must "consider [] the relevant factors and [draw] a 'rational connection between the facts found and the choice made.'" *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1016 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988) (citations omitted). *Ill. Commerce Comm'n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)(reviewing court cannot "uphold a regulatory decision that is not supported by substantial evidence on the record as a whole"); *Cosmopolitan Broad Corp. v. FCC*, 581 F.2d 917, 930 (D.C. Cir. 1978)(an agency cannot ignore evidence before it); *Genuine Parts Co. v. Environmental Protection Agency*, 890 F.3d 304, at 312 (D.C. Cir. 2018)(finding the Environmental Protection Agency relied on evidence that did not respond to the petitioners' argument and ignored evidence contradicting its position).

3. The Commission's decision that Baseline Reliability Projects are planned to address local reliability issues was arbitrary and capricious because it was inconsistent with the basis on which the Commission accepted BRPs in the first instance. *Hatch v. FERC*, 654 F.2d 825, 834-35 (D.C. Cir. 1981)(FERC is required to provide a reasoned explanation for failure to adhere to its own precedents); *see also PG&E Gas Transmission v. FERC*, 315 F.3d 383, 390 (D.C. Cir. 2003)("FERC's failure to come to terms with its own precedent reflects the absence of a reasoned decisionmaking process"); *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999)("for the agency to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious"); *North Carolina Utils. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (rejecting a FERC order because the Commission did not "sufficiently explain[] its departure from prior cases").

4. The Commission's decision was arbitrary and capricious as it applied cost causation principles in a manner inconsistent with prior precedent. The Commission improperly narrowly construed *Old Dominion Electric Cooperative v. FERC*, 898 F.3d 1254 (D.C. Cir. 2019), and *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)). *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999)("for the agency to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious"); *North Carolina Utils. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (rejecting a FERC order because the Commission did not "sufficiently explain[] its departure from prior cases"). At the same time, the Commission expanded the holdings of various cost causation precedent by citing to out of context sentences without applying the underlying legal premise, thus arbitrarily expanding holdings to allow non-quantitative location-based cost allocation notwithstanding evidence that significant benefits are enjoyed in other zones that bear no responsibility for the costs. *Illinois Commerce Commission v. FERC*, 576 F.3d 470 (7th Cir. 2009); *Midwest ISO TOs v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004).

5. The Commission determination was arbitrary and capricious because it failed to address the fact that because of the lack of Multi-Value Projects reliability-based projects in MISO have no regional cost allocation methodology available to them, a violation of Order No. 1000. The United States Court of Appeals for the Seventh Circuit confirmed that: "It's true that FERC is not allowed to exempt all reliability projects from cost sharing, Order No. 1000, *supra*, 136 FERC ¶ 61051 at P 690, but it can exempt some as long as other types of transmission projects that yield reliability benefits, such as multi-value projects, can be included in a regional plan for purposes of cost allocation." *MISO TOs v FERC*, 819 F.3d 329, 335 (7th Cir. 2016). Nevertheless, the Commission has continued to allow all reliability projects in MISO to be exempted from regional cost allocation because: (1) Baseline Reliability Projects are exempted from regional cost allocation; and (2) Multi-Value Projects

have not filled that void as previously asserted. FERC specifically promised that it would “monitor the results of the System Operator’s regional planning process” to confirm the appropriateness of Multi-Value Project providing the only regional cost allocation option for reliability based transmission additions. The Complaint Denial Order fails to sufficiently explain the any Commission’s consideration of the lack of past Multi-Value Projects in the Denial of the Complaint, nor did the Commission address the lack of any expectation for future planning of Multi-Value Projects. The Commission’s failure to act based on its review of actual outcomes was arbitrary and capricious are it allows a violation of Order No. 1000.

IV. REQUEST FOR REHEARING

A. **The Commission Disregarded Or Failed To Address Record Evidence That For Certain Baseline Reliability Projects, Benefits To Zones Not Being Allocated Costs Was More Than A Modest Spillover, Establishing The Mandatory Location-based Allocation As Unjust And Unreasonable**

In the Complaint Denial Order, the Commission held that

[t]he evidence provided and arguments advanced by Complainants and supporting parties do not upset the Commission’s finding in the BRP Order that ‘the [transmission] pricing zone in which a [BRP] is located receives **most of the benefits** provided by that project, and therefore, . . . **assigning all of the associated costs** to that pricing zone results in an allocation of costs that is roughly commensurate to the distribution of the project’s benefits.’¹²

Not surprisingly, the Commission Determination section of the Complaint Denial Order does not cite to the “evidence provided and arguments advanced,” as careful parsing of Complainants’ evidence and arguments points to the undeniable conclusion that, for the projects identified by the Complainants, the cost allocation is not even roughly commensurate to benefits.

The Complaint provided an engineering analysis of Baseline Reliability Projects, tested against the same LODF methodology relied on by MISO, with Commission approval, between the years 2006 and 2013 as an appropriate beneficiary determining cost allocation methodology. The Commission relies on the LODF methodology, a methodology never found to be unjust and

¹² Complaint Denial Order at P 81 [emphasis added].

unreasonable by the Commission, when it produces analysis favorable to the Commission’s desired result.¹³ However, the Commission ignored LODF evidence that did not fit that preferred outcome. Reviewing Courts have rejected this type of selective use of similar evidence from the evidentiary record.¹⁴

The Complainants’ LODF-based engineering analysis – the Pterra Report – demonstrated that Baseline Reliability Projects across MISO have costs that are substantially mis-allocated. On pages 26 – 29 of the Complaint, the Complainants identified 12 discrete Baseline Reliability Projects with significant reliability benefits to zones other than the zone to which costs were allocated. For those 12 Baseline Reliability Projects the zone in which each project is located has been, or will be, allocated costs of \$538,105,127.¹⁵ The Complaint and the Pterra Report demonstrate that more than 50% of the reliability benefits of those projects, representing costs of nearly \$300,000,000 as measured by an accepted cost causation analysis, are enjoyed by other zones.¹⁶ The project voltages range from a 115 kV lower voltage project to 345 kV high voltage facilities.

¹³ Complaint Denial Order at P 88, citing Informational Filings which relied on LODF analysis.

¹⁴ *Genuine Parts Co. v. Environmental Protection Agency*, 890 F.3d 304, 312 (D.C. Cir. 2018)(“an agency cannot ignore evidence that undercuts its judgment; and it may not minimize such evidence without adequate explanation. *See Morall v. DEA*, 412 F.3d 165, 179–80 (D.C. Cir. 2005); *see also, e.g., Bellagio, LLC v. NLRB*, 863 F.3d 839, 849–52 (D.C. Cir. 2017); *Lakeland Bus Lines, Inc. v. NLRB*, 347 F.3d 955, 963 (D.C. Cir. 2003) (holding that the agency could not rely on a “clipped view of the record” to support its conclusion”).

¹⁵ Complaint at 29. As noted in the Complaint, one of the listed projects (9925) was identified on MISO MTEP Appendix B, projects under consideration.

¹⁶ The Complaint reflects the misallocation as \$308,962,440.08 and a 57% cumulative misallocation of reliability benefits across the projects referenced. In response to the Complaint, MISO identified for the first time that although its MTEP records reflected that Project 8113 was in the XEL zone (a 1.81% beneficiary), the project was in the Great River Energy zone (a 68.61% beneficiary). Assuming for purposes of this rehearing that Great River Energy was actually assigned the Baseline Reliability Project, a fact MISO did not assert in its testimony, the misallocation would change from 98% to 31.39%, with \$15,354,732.40 of the \$48,030,908 still

The Projects Chart from the Complaint was as follows:

Estimated Cost	Cost Allocation Under Current Method	LODF-mile Method Benefits and Cost Allocation Result	Total Misallocated to Zone Where Project Is Located	
			Costs	Percent
2013				
4292 Lenawee (now Morocco) 345/138 kV Station*				
Located in METC, the project involves looping 138kV circuits into a new substation. Also includes installing a new 345/138kV transformer at the new substation and looping 345kV circuit into the new substation.				
\$25,950,000	METC 100%	METC 61.91%, \$16,066,929.54	\$9,883,070.46	38%
		ITCT 38.02%, \$9,865,691.35		
		NIPS 0.07%, \$17,379.11		
3828 Lore-Turkey River-Stoneman 161 kV Rebuild				
Located in ITCM, the project includes rebuilding a 161kV line to 446 MVA. Only the ITC owned portion of the Turkey River-Stoneman line is to be rebuilt.				
\$24,500,000	ITCM 100%	ITCM 64.49%, \$15,800,751.06	\$8,699,248.94	36%
		DPC 12.98%, \$3,180,611.85		
		ATC 9.87%, \$2,418,591.03		
		XEL 8.50%, \$2,083,263.10		
		MEC 3.48%, \$852,554.44		
		AMMO 0.67%, \$164,228.52		
2014				
4614 New Franklin-McComb: Build 115 kV Line				
Located in Entergy Mississippi, the project involves building a new 115 kV line (constructed to 230 kV) and upgrading all substation elements along a 115 kV line to provide a minimum 1000A rating.				
\$59,960,000.00	EES MS 100%	EES AR 2.18%, \$1,308,881.63	\$59,960,000.00	100%
		CLECO 2.05%, \$1,230,543.85		
		EES LA 93.20%, \$55,884,639.52		
		SMEPA 2.56%, \$1,535,935.00		

being misallocated. This would change the total misallocation of benefits from \$308,962,440.08 to \$276,286,264.48 or 51.3% overall misallocation.

2015				
8160 Morgan Valley-Beverly 345 kV Switching Station and Line				
Located in ITCM, the project involves building a new 345 kV switching station and adding a new 6.5 mile 345 kV line from the switching station to a new 345/161 kV substation adjacent to an existing 161/69/34.5 kV substation. The new 345 kV portion of the substation connects to the existing substation via a new 345/161 kV autotransformer.				
\$38,156,592	ITCM 100%	ITCM 69.73%, \$26,606,592	\$11,550,000	30%
		MEC 27.96%, \$10,668,583		
		AMMO 2.31%, \$881,417		
8113 230/115 kV Substation at Minot & New 230 kV Line to GRE McHenry Substation*				
Located in XEL, the project involves constructing a new 230/115 kV substation and new 230 kV line. The project is a joint project with BEPC.				
\$48,916,000	XEL 100%	GRE 68.61%, \$33,560,617	\$48,030,908	98% ¹⁷
		OTP 21.36%, \$10,449,662		
		MP 6.87%, \$3,359,221		
		XEL 1.81%, \$885,092		
		MDU 1.35%, \$661,407		
8020 Pleasant Corner-Beacon 161 kV Line & Terminal				
Located in MEC, the project involves constructing the new Pleasant Corner-Beacon 161 kV line and installing a new 161 kV line terminal at Beacon.				
\$15,265,000	MEC 100%	MEC 38.64%, \$5,897,910	\$9,367,090	61%
		ITCM 52.44%, \$8,004,843		
		AMMO 7.93%, \$1,210,024		
		AMIL 0.74%, \$112,205		
		MPW 0.26%, \$40,019		
2016				
9925: Tap Stone Lake – Gardener Par 345 kV Line**				
Located in ATC, the project includes a 345 kV line into a new 345 kV substation.				
\$15,000,000	ATC 100%	XEL 60.31%, \$9,045,975.06	\$10,341,987.37	69%
		ATC 31.05%, \$4,658,012.63		
		ITCM 3.29%, \$492,848.67		
		MP 3.07%, \$460,482.67		
		MEC 2.25%, \$337,055.42		
		GRE 0.04%, \$5,625.51		

¹⁷ See *supra* fn 15, and *infra* fn 22.

2017				
12037 Montgomery-Cane River 230 kV Line				
Located in EES LA, the project involves constructing a new 230 kV line and installing a new 230/115 kV autotransformer.				
\$37,576,054	EES LA 100%	EES LA 42.56%, \$15,993,989.19	\$21,582,064.81	57%
		CLECO 48.54%, \$18,240,311.97		
		ETI 4.50%, \$1,689,423.27		
		EES MS 2.79%, \$1,048,366.31		
		EES AR 1.56%, \$587,022.09		
		LUS 0.05%, \$16,941.17		
12112 North ALP 230-138 kV Substation & 230 kV Line*				
Located in EES-LA, the project includes building a new 230-138 kV substation, constructing a 230kV line from the substation, and installing auto.				
\$64,982,013 ¹⁸	EES LA 100%	EES LA 42.12%, \$27,371,488.23	\$37,610,524.68	58%
		CLECO 42.10%, \$27,355,751.51		
		LUS 15.78%, \$10,254,773.26		
12985 Segura to Teche To Bayou Vista 230 kV Line				
Located in CLECO, the project involves building approximately 47 miles of 230 kV line, expanding an existing substation for a new 3 terminal 230 kV ring, and adding a 500 MVA 230/138 kV Auto at Teche Substation.				
\$90,000,000 ¹⁹	CLECO 100%	CLECO 36.25%, \$32,623,500.18	\$57,376,499.82	64%
		EES LA 54.83%, \$49,346,529.97		
		EES MS 3.11%, \$2,799,260.74		
		ETI 2.20%, \$1,977,797.03		
		LUS 1.79%, \$1,607,451.09		
		EES AR 1.33%, \$1,200,196.92		
		EES NO 0.49%, \$445,264.07		

¹⁸ Originally approved with an estimated cost of \$64,982,013, as of MTEP18, the project is now estimated to cost \$107,621,804.00.

¹⁹ Project 12985 was originally approved with an estimated cost of \$90,000,000, but as of MTEP18, is estimated to cost \$137,412,079, a concerning increase of over \$47 million.

2018				
12101 East ALP 230 kV Line				
Located in EES LA, the project involves constructing a 230 kV line and installing a 230-138 kV auto at a new 230 kV station.				
\$105,479,468	EES LA 100%	EES LA 72.27%, \$76,232,339	\$29,247,129	28%
		CLECO 21.53%, \$22,714,389		
		LUS 6.19%, \$6,532,740		
9716 Coughlin-Plaisance 138 kV Reconductor				
Located in CLECO, the project involves rebuilding a 138 kV line for 230 kV with 2-954 ACSS conductor.				
\$12,320,000	CLECO 100%	CLECO 56.87%, \$7,006,083	\$5,313,917	43%
		EES LA 34.28%, \$4,223,234		
		EES MS 5.53%, \$681,167		
		EES NO 1.34%, \$165,296		
		EES AR 1.26%, \$155,402		
		LUS 0.72%, \$88,818		
TOTALS				
TOTAL APPROVED			TOTAL MISALLOCATED	
\$538,105,127			\$308,962,440.08	57%
*Denotes complex project. Complex projects are described in the Pterra Report at page 7.				
**Denotes project included in Appendix B of the MTEP.				

The extensive Pterra Report, the Complainants’ Answer, and the Testimony of Ricardo Austria²⁰ further support the evidence provided with the Complaint. The Complaint Denial Order ignores the substance of these findings.

As detailed throughout the Complaint, the Pterra Report, and the Complainants’ Answer, the identification of beneficiaries was through use of the LODF methodology. Regarding LODF, MISO specifically stated “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.”²¹ Consistent with

²⁰ *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 Testimony”).

²¹ *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 &*

MISO's statements about the deliverables of the LODF analysis, each of the Baseline Reliability Projects listed in the Complaint shows substantial *beneficiaries* of the Project based on the impact on the total flows in zones other than the zones in which the costs are mandatorily allocated under the current cost allocation methodology. Among those 12 projects, the lowest level of benefits inappropriately paid for in the zone in which the project is located is 28% (for Project 9716). For multiple projects, well over 50% of the "beneficiaries" are outside the zone where 100% of the costs are mandatorily allocated. This is not surprising for an interconnected grid where electrical flows follow the laws of physics.²²

The evidence presented is unequivocal. No intervenor substantively challenged the LODF percentages for the projects listed on pages 26 - 29 of the Complaint, or asserted that the LODF percentages were incorrectly calculated,²³ instead arguing that the LODF methodology did not properly measure beneficiaries, contrary to MISO's own statements. Not only did the Commission seemingly reject this assertion regarding the failure of the LODF methodology to measure beneficiaries, by relying on the Informational Filings as support for its conclusion of

compliance, 147 FERC ¶ 61,127 (2014) ("BRP Cost Allocation Rehearing Order"), *aff'd MISO Transmission Owners v. FERC*, 819 F.3d 329 (7th Cir.2009).

²² Austria Testimony, page 12, lines 13-16.

²³ As noted *supra* at fn 15, with regard to the LODF percentages, MISO asserted that there was one error, not in the percentage calculations, but to the zone in which the project was physically located. As reflected in the testimony of Mr. Austria, this "error" was one on the part of MISO, not Pterra, and the per-zone percentage was accurately calculated by Pterra based on the information available from MISO at that time. Those percentages show that if the Baseline Reliability Project was assigned to Xcel as MISO's records reflected at that time, the project was misallocated by 98%, and if the project was assigned to Great River, as MISO now claims it should have been, the misallocated benefits are still more than 31%. MISO's affidavit does not actually identify how the costs were allocated in light of MISO's error; the only evidence of the corrected calculations was presented by Complainants through the testimony of Mr. Austria.

primarily local benefits, the Commission relied on LODF as appropriately measuring beneficiaries of Baseline Reliability Projects.²⁴

1. The Commission’s Limited Commentary On The Evidence Does Support The Commission’s Do Nothing Approach

Notwithstanding the Complainants’ unequivocal LODF-based evidence, solidified by both MISO’s and the Commission’s past reliance on LODF as an appropriate measure of beneficiaries, the Commission refused to act on the evidence presented. The Commission did not address the individual Baseline Reliability Projects that were analyzed, or the level of beneficiaries reflected outside the zone where costs are allocated. Instead of addressing head-on the evidence that Complainants presented, the Complaint Denial Order merely concluded that “the value and meaning of the findings of the Pterra Report are mixed.”²⁵ Yet the Commission did not elaborate on its conclusion that the “value and meaning” are mixed instead jumping to commentary regarding the scope of the study as something “additionally” wrong.

The meaning of the Pterra Study is not “mixed” at all. The study shows that, without question, for some number of Baseline Reliability Projects the “spillover of benefits” is more than modest.²⁶ The total of 29 projects analyzed further show that while for some projects the “spillover of benefits” is more modest, for many the LODF results show that benefits are not 100% local. The Commission prefers to focus on those Projects where the 100% location-based cost allocation is *close* to correct, rather than explain how it is appropriate, consistent with cost causation principles, to charge one zone 100% of the costs while parties outside the zone receive

²⁴ Complaint Denial Order at P 88.

²⁵ *Id.* at 87.

²⁶ *MISO Transmission Owners v. FERC*, 819 F.3d 329, 336 (7th Cir. 2016).

benefits of 38%, 36%, 100%, 30%, 31%,²⁷ 61%, 69%, 57%, 58%, 64%, 28%, and 43% and pay nothing. As set forth in the Complaint, and not rebutted, consumers in the zone where the 12 Baseline Reliability Projects referenced are located paid (or will pay)²⁸ more than \$300 million in excess of what they would be allocated under a quantitative cost allocation methodology like LODF.²⁹ The Commission is not permitted under the judicial precedent for reasoned decision-making to simply cherry pick the evidence supporting its position, if there was any here, and ignore similar evidence that supports an opposite conclusion. *Cosmopolitan Broad Corp. v. FCC*, 581 F.2d 917, 930 (D.C. Cir. 1978)(an agency cannot ignore evidence before it); *Genuine Parts Co. v. Environmental Protection Agency*, 890 F.3d 304, at 312 (D.C. Cir. 2018)(finding the Environmental Protection Agency relied on evidence that did not respond to the petitioners’ argument and ignored evidence contradicting its position).

Rather than address the evidence presented, the Commission noted that “the sample size in the Pterra Report is highly selective.”³⁰ There is no dispute about that fact, but the Complaint Denial Order does not identify any legal relevance of the observation. Is the Commission asserting that it is okay for a cost allocation methodology to be 60% wrong sometimes, so long as it is not too many times? The Complaint identified \$300 million in misallocated costs, out of \$538 million in costs analyzed, for just 12 projects. They were selected because they prove the point: mandated location-based cost allocation is arbitrary and results in more than a modest spillover of unaccounted for benefits for numerous Baseline Reliability Projects. Analyzing

²⁷ As discussed above, Project 8113 is represented as 31% misallocation here based on MISO’s acknowledgement, made first in its answer, that it had misidentified the zone in which the project is located when it made its required Informational Filings.

²⁸ Project 9925 is in Appendix B and has not been selected for construction yet. Complaint at 27.

²⁹ Complaint at 28.

³⁰ Complaint Denial Order at P 87.

more projects will not change the cost allocation deficiencies in the Projects analyzed or the evidence presented to the Commission.

Although the “selective” nature of the analysis may impact the remedy the Commission selects, it should play no role in the first prong of the Commission’s Section 206 analysis: concluding that the mandatory location-based Baseline Reliability Project cost allocation methodology is unjust and unreasonable as not appropriately aligning costs with causation for all projects. The Commission’s “selective” reference is also inconsistent with precedent. In *ODEC v. FERC*, the D.C. Circuit analyzed the non-location based benefits of only two transmission facilities (with 43% and 47% local benefits respectively)³¹ in determining that the Commission had inappropriately accepted a location-based cost allocation methodology for all similar projects. The D.C. Circuit vacated the order accepting the cost allocation methodology as arbitrary and capricious, remanding the matter to the Commission.³² The D.C. Circuit took this step notwithstanding that the number of projects in the category “known to have regional benefits” was only 2%.³³ On remand, the Commission did not rely on the “selective” nature of the D.C. Circuit analysis, despite several parties suggesting that the Commission should do exactly that and apply the ruling narrowly to only high voltage projects.³⁴ (As noted above, the Pterra Report included analysis of several high voltage projects.) Instead, the Commission set aside the cost allocation methodology for the entire category of projects with the location-based

³¹ *ODEC v. FERC*, 898 F.3d at 1263.

³² *ODEC v. FERC*, 898 F.3d 1254.

³³ *ODEC v. FERC*, 898 F.3d at 1261

³⁴ *See, e.g.*, Answer of Linden VFT, LLC, filed December 20, 2018 in Docket Nos. ER15-1397-001 *et seq.* and ER15-1344-001 *et seq.*

cost allocation methodology, requiring a reallocation of costs for any projects for which costs had been misallocated.

The Section 206 complaint by the Delaware and Maryland Public Service Commissions related to the Artificial Island line represents an even more “selective” analysis of a generic cost allocation methodology, one specific type of project. After initially concluding that establishing an improper cost allocation for one type of project was insufficient to establish that a cost allocation methodology is unjust and unreasonable, on rehearing the Commission appropriately held that the cost allocation for the project under review was inappropriate and therefore unjust and unreasonable under the Federal Power Act. In that instance, the remedy did not involve a wholesale rejection of the existing cost allocation methodology, but development of a new methodology for the specific (and somewhat unique) project under review and any similarly situated future projects. Like both of the referenced decisions, here the Commission has latitude in the remedy it chooses, but it has no latitude under Section 206 of the Federal Power Act but to find the existing methodology unjust and unreasonable as it does not comport with cost causation mandates.

Regarding the evidence, the Commission next asserts that MISO makes compelling arguments that, for some of the projects for which Complainants allege that the current BRP cost allocation method produces the most egregious cost misallocations, the Pterra Report may contain significant errors.”³⁵ Yet the Commission cites to only one alleged “significant” error as support for its compelling argument conclusion. Specifically, the Commission identified the following alleged error:

For example, for Project 8113, which the Complaint alleges has misallocated 98% of its costs, the Webb Testimony argues that

³⁵ Complaint Denial Order at P 87.

Complainants erroneously stated that the project was in the Xcel zone and not Great River Energy's, which, according to Complainants received 69% of benefits. Webb Test. at 26; Complaint at 27. The Webb Testimony states that, in fact, the project is Great River Energy's zone and thus, it is not inappropriate for Great River Energy to be responsible for its costs. Webb Test. at 26.³⁶

The Commission reference to Webb's testimony, however, ignores the Testimony of Mr. Austria of Pterra stating

For the Pterra Report, the information on MTEP BRP project locations was based on information provided by MISO, specifically MTEP Reports and MISO's filings with the Commission relating to the LODF-mile implementation. The specific source for Project 8113 is the Excel file attachment to MISO's Informational Filing with the Commission dated August 1st, 2016, and modified on March 17, 2017.³⁷

Mr. Austria provided a screen shot of the MISO identification of the "Geographic Location by TO Member System – XEL."³⁸ Thus, to the extent an error existed, it was an error presented to the Commission by MISO in the very Informational Filing the Commission referenced in the next paragraph of the Complaint Denial Order as supportive of the Commission's decision.³⁹

The Commission's selective reference to Mr. Webb's critique, but not the fact that it was misplaced, is arbitrary and capricious. But more importantly, it is a distraction from the facts that were not challenged. If Project 8113 is removed entirely from the analysis, there are still

³⁶ Complaint Denial Order at P 87, fn 26.

³⁷ Austria Testimony at 13.

³⁸ Austria Testimony at 14.

³⁹ Complaint Denial Order at P 88. Also, missing from the MISO assertion of error is any proof that MISO did not actually assign the Baseline Reliability Project to XEL and allocate 100% of the costs to its zone. MISO certainly filed information with the Commission indicating that it believed the project to be located in the XEL zone. Indeed, Webb's testimony notes "*Upon closer examination* of the facilities in the model, the project is in the GRE zone." Did this closer examination occur only after the Complaint was filed? Were the facilities already built? To which consumers were costs actually allocated? Those are the questions the Commission should be asking.

hundreds of millions of dollars in misallocated costs over 11 projects instead of 12. The Complaint Denial Order did not address the full range of evidence before it, including the Testimony of Mr. Austria rebutting any alleged errors in the Pterra Report. A reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole.”⁴⁰ The substantial evidence supports only one conclusion: mandatory location-based cost allocation methodology for Baseline Reliability Project is unjust and unreasonable as it misallocated costs for a number of Baseline Reliability Projects and it provides no mechanism for regional cost allocation to occur, should there be regional benefits to the projects.

2. The Evidence Contradicts The Basis For The 2013 Acceptance Of The Cost Allocation Change

The Commission held that “Complainants have not demonstrated that the current BRP cost allocation is unjust and unreasonable because the record here is not sufficient for us to conclude that a BRP’s local pricing zone does not receive most of the benefits associated with the BRP.”⁴¹ The Commission further held “Complainants have not contradicted the finding in *MISO Transmission Owners v. FERC* that ‘spillover of benefits to other zones is modest enough to make the local allocation of costs ‘roughly commensurate’ with the allocation of benefits.’”⁴² Yet the unrebutted evidence contradicts both of these assertions. For the 12 projects specifically referenced in the Complaint, the evidence established misallocated costs of 38%, 36%, 100%, 30%, 31%,⁴³ 61%, 69%, 57%, 58%, 64%, 28%, and 43%; well more than a “modest” spillover of benefits to other zones relied on by the Seventh Circuit to uphold the Commission’s acceptance

⁴⁰ *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009).

⁴¹ Complaint Denial Order at P 86.

⁴² Complaint Denial Order at P 81.

⁴³ *See supra* fn 15.

of the local cost allocation methodology on a prospective basis. The definition of “modest” is “limited in size, amount, or scope.”⁴⁴ Approximately \$300 million in misallocated costs is hardly “limited.” Nor do those numbers support the assertion that the local pricing zone receives “most of the benefits” associated with every Baseline Reliability Project. Although that assertion regarding most of the benefits may be true *most of the time*, the evidence established that it is not true all of the time.

In this regard, the Commission’s reference to “most of the benefits” and modest spillover belie an apparent Commission belief that its obligation in reviewing the justness and reasonableness of region-wide cost allocation methodology, applying to all projects in a category of transmission additions, is whether the methodology works most of the time. The Compliant Denial Order did not identify any judicial or Commission precedent supporting such a most of the time standard, which is not surprising. Section 206 of the Federal Power Act has no such limitation. Instead it requires that “whenever the Commission . . . shall find **any** rate . . . or that **any** rule, regulation, practice, or contract affecting such rate, . . . is unjust, unreasonable, unduly discriminatory or preferential, the Commission **shall determine** the just and reasonable rate, charge, classification, rule, regulation . . .”⁴⁵ For Baseline Reliability Projects, each project is subject to individualized cost allocation and thus each individual project is a rate or each location-based cost allocation determination is an individual practice affecting a rate and subject to challenge.

The Commission’s failure to address the evidence before it and to apply that evidence to the legal precedent on Baseline Reliability Project cost allocation was arbitrary and capricious,

⁴⁴ <https://www.merriam-webster.com/dictionary/modest>

⁴⁵ 16 U.S.C. § 824e [emphasis added].

and reflects a lack of reasoned decision-making. The Commission should grant rehearing and confirm that the existing cost allocation methodology for Baseline Reliability Projects is unjust and unreasonable. The Commission can determine in the remedy phase whether the remedy it chooses will apply only to the extent that the spillover of benefits is more than modest (similar to the decision in *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)) (collectively the “*Delaware Decision*”) or applies to establish a revised methodology for all Baseline Reliability Projects (*ODEC v. FERC*).

B. The Commission’s Determination That Baseline Reliability Projects Are Designed To Address Localized Issues Is Arbitrary And Capricious And Not The Result Of Reasoned Decision-making

The Commission’s Complaint Denial Order is based in part on the faulty determination that Baseline Reliability Projects are *designed* to address specific and localized issues. There is absolutely no legitimate support for that proposition. Specifically, the Commission held:

To this point, we note that the explicit purpose of BRPs, as stated in the MISO Tariff, is ‘to ensure that the Transmission System is in compliance with applicable Electric Reliability Organization [reliability standards and reliability standards adopted by Regional Reliability Organizations and applicable within the Transmission Provider Region.’ We also note that, in practice, the type of reliability issue that a BRP is designed to address is typically specific to a particular transmission facility or set of facilities owned by the same transmission owner.[fn 24] Because the issues that BRPs are designed to address are specific and localized, we find that Complainants have not demonstrated that it is no longer just and reasonable for MISO to maintain its current BRP cost allocation method, which allocates costs to the transmission pricing zone where the BRP is located.

[fn 24] *See Webb Test.* at 8 (‘The overwhelming majority of BRPs address a specific violation of NERC Transmission Planning

Standards . . . on a specific transmission facility or set of facilities owned by the same Transmission Owner’).⁴⁶

Although the first quoted assertion is accurate, that point has no connection to the conclusion that Baseline Reliability Projects are *designed to address specific and localized* issues. Likewise, the cited assertion does nothing to establish that the assertion of exclusively local beneficiaries is anything more accurate than most of the time.

As an initial matter, and as established in the Complaint, the Commission’s acceptance of Baseline Reliability Projects as a transmission project category does not support the local focus conclusion. The Complaint noted:

MISO defined Baseline Reliability Projects ‘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.’ MISO 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.’⁴⁷

The Complaint further noted that the Commission affirmatively responded to the Organization of MISO States’ request to amend the tariff language related to Baseline Reliability Projects to **ensure** that Baseline Reliability Projects were not included that only addressed needs of the local system and not the broader “Transmission System.”⁴⁸

MISO witness Webb supports this regional focus, testifying “BRPs are a specific project type needed to address applicable NERC reliability standards and reliability standards adopted

⁴⁶ Complaint Denial Order at P 86.

⁴⁷ Complaint at 15-16 [footnotes omitted].

⁴⁸ *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106, at P 121 (2006).

by the Regional Entities.”⁴⁹ He also testified that “MISO Staff determines the preferred solutions consistent with Attachment FF, and projects proposed to move forward are recommended to the MISO Board for approval and inclusion in Appendix A of the MTEP.”⁵⁰

The fact that Baseline Reliability Projects address NERC reliability standards and reliability standards adopted by the Regional Entities, and the preferred solutions are determined by MISO staff supports the Commission precedent from its original acceptance of the Baseline Reliability Project category that such projects are focused on maintaining the regional grid, not addressing localized issues. The Complaint Denial Order ignores this history.⁵¹

Equally important for an analysis of whether the Complaint Denial Order meets the requirements of reasoned decision-making, the testimony that the Commission cited does not actually support the premise that Baseline Reliability Projects are “designed” to address localized issues that demand exclusively local cost allocation. The sentence cited merely confirms that Baseline Reliability Projects address specific NERC violations on specific facilities owned by a specific Transmission Owner.⁵² This analysis would classify even a Baseline Reliability Project that connects multiple Transmission Owners as a local project. By this reasoning, every transmission facility is “local” and there is no such thing as “regional” transmission planning. This statement by MISO’s only witness says nothing about the “cause” of the NERC violations and therefore provides no information relevant to cost causation. In contrast, Complainants provided expert testimony. Mr. Austria’s Testimony makes clear that the inference in Mr.

⁴⁹ Webb Testimony at 5, lines 10-12.

⁵⁰ Webb Testimony at 6, lines 17-19.

⁵¹ The Complaint Denial Order also ignored the fact that MISO has a category for projects “designed to address [] specific and localized” issues, the “Other Project” category.

⁵² Complaint Denial Order at 86, *citing* Webb Testimony at 8, lines 18-20.

Webb’s Testimony, adopted by the Commission, that Baseline Reliability Projects address inherently local issues is false. Mr. Austria testified:

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

A. Mr. Webb states in p. 20 that “BRPs are solutions to local transmission issues that have benefits to customers located near the transmission issue.” I disagree with this in the context that it is given as a generalization rather than a specific example. The flow changes that occur from a BRP will follow the path dictated by the physics of the grid and not civic boundaries or utility footprints. This is demonstrated throughout the sample projects included in the Pterra Report. Only by coincidence do the physics result in flow changes that align with civic boundaries or utility ownership of transmission facilities that are proximate to the BRP. However, this is not the rule and any assumption that it is the rule, while ignoring the broader findings shown by simulation and analysis, would be incorrect. An example can explain. Project 9716 was in the CLECO area and is a rebuild of a 138 kV transmission line. Without specifically addressing the analysis performed, Mr. Webb suggests that because the reliability violation was on the CLECO system, CLECO is the beneficiary. The reliability need for rebuilding the Coughlin to Plaisance 138 kV line is to address its thermal overload following a contingency outage of a parallel line. It is important to note that the role of transmission is to transfer power from the sources, comprised of generators, to the customer loads. An overload violation of the NERC reliability criteria develops as a consequence of changes in the use of the transmission line such as increases in demand, addition of new generation or new patterns of power flow on the grid, among others. The transmission line would not need to have changed at all in terms of its thermal rating and other electrical characteristics for the overload violation to occur. The transmission line is not the cause of the reliability violation but is the indicator that such a violation is present. Mr. Webb, and others opposing use of LODF to allocate costs for BRPs, 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 approach ignores the interconnected nature of the grid. The solution to a reliability violation may be located in a specific location, i.e., the Coughlin to Plaisance right-of-way, but the cause of the overload violation is not on the transmission path but on dispatch of

generation and load demand located elsewhere. More importantly, 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 spread to neighboring transmission owners as well.

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

A. As noted in my earlier response to Project 9716, 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. Measuring these flow changes may demonstrate that the benefits of a particular change in the transmission system results in benefits only within the ownership boundary of the facility owner, but as demonstrated by the Pterra Report, the results often show significant flow changes, and thus benefits, outside the ownership boundary.⁵³

The Complaint Denial Order did not respond to this specific and detailed rebuttal to Mr. Webb's generalities. This testimony goes to the very heart of this case: "Measuring [] flow changes **may** demonstrate that the benefits of a particular change in the transmission system results in benefits only within the ownership boundary of the facility owner, but as demonstrated by the Pterra Report, **the results often show significant flow changes, and thus benefits, outside the ownership boundary.**" The Commission's analysis failed to address this testimony head-on or the underlying characteristics of an integrated electrical grid. Although that failure may have been supportable when the location-based cost allocation methodology was to be used prospectively and in light of an assertion that Baseline Reliability Projects would be displaced by

⁵³ Austria Testimony at 9-11.

regional cost allocated projects such as Multi-Value Projects, in the Complaint Denial Order the Commission ignored proof related to specific projects that established the assertions were false as to either the validity of the cost allocation methodology or the reduction in Baseline Reliability Protects through expansion of Multi-Value Projects. As a result, the Complaint Denial Order fails to engage in reasoned decision-making.⁵⁴ The Commission must revisit its decision and determine that the existing Baseline Reliability Project location-based local cost allocation methodology is unjust and unreasonable.

C. The Commission’s Determination That Baseline Reliability Projects Are Planned To Address Local Issues Is Arbitrary And Capricious As Inconsistent With The Commission’s Precedent Accepting The Project Category

As referenced immediately above, the Commission accepted the Baseline Reliability Project category to address reliability issues impacting the MISO controlled grid.⁵⁵ There was no evidence presented in that proceeding, nor any Commission finding, that Baseline Reliability Projects were locally focused.⁵⁶ The Commission cannot deviate from those findings without evidence of some change, or a definitive explanation for its change.⁵⁷

⁵⁴ The Commission must “consider [] the relevant factors and [draw] a ‘rational connection between the facts found and the choice made.’” *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1016 (D.C. Cir. 1987), cert. denied, 485 U.S. 1006 (1988) (citations omitted). *Ill. Commerce Comm’n v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009)(reviewing court cannot “uphold a regulatory decision that is not supported by substantial evidence on the record as a whole”); *Cosmopolitan Broad Corp. v. FCC*, 581 F.2d 917, 930 (D.C. Cir. 1978)(an agency cannot ignore evidence before it); *Genuine Parts Co. v. Environmental Protection Agency*, 890 F.3d 304, at 312 (D.C. Cir. 2018)(finding the Environmental Protection Agency relied on evidence that did not respond to the petitioners’ argument and ignored evidence contradicting its position).

⁵⁵ Improved grid reliability was one of the primary drivers for the Commission’s effort to obtain greater RTO participation through Order No. 1000. *Regional Transmission Organizations*, Order No.2000, FERC Stats. & Regs. ¶ 31,089, 30,993 (1999)(“Order No.2000”).

⁵⁶ *Midwest Independent Transmission System Operator, Inc.*, 114 FERC ¶ 61,106 (2006).

⁵⁷ *Hatch v. FERC*, 654 F.2d 825, 834-35 (D.C. Cir. 1981)(FERC is required to provide a reasoned explanation for failure to adhere to its own precedents); *see also PG&E Gas Transmission v.*

The Complaint Denial Order offers no reasoned explanation for the Commission’s deviation from its precedent on the underlying regional focus of Baseline Reliability Projects. Instead, the Commission focused on the cost allocation applied to the projects as reflecting that they are planned to address local issues. But even that precedent tells a different story.

As the Complaint laid out in detail,⁵⁸ the Commission set a portion of the initial Baseline Reliability Project cost allocation proposal for a technical conference because the Commission was not convinced that the 20% regional-wide allocation was high enough for Baseline Reliability Projects that were 345 kV and above.⁵⁹ If the projects were truly addressing local issues, this undertaking would have been unnecessary. The nature of Baseline Reliability Projects did not change and they continue to include projects that are 345 kV and above that the Commission recognized have region-wide reliability impacts and benefits.⁶⁰ But even for the projects below 345 kV, the LODF analysis established regional, if not region-wide, benefits.⁶¹

The only thing that has changed regarding Baseline Reliability Projects since their inception is the cost allocation assigned to them (based on the MISO Transmission Owners’ desire to avoid competition),⁶² not their basic nature. Nevertheless, the Commission engages in

FERC, 315 F.3d 383, 390 (D.C. Cir. 2003)(“FERC’s failure to come to terms with its own precedent reflects the absence of a reasoned decisionmaking process”).

⁵⁸ Complaint at 17-19.

⁵⁹ *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106 at PP 42-43 (The Commission explained that it was “concerned that the proposed [20%] regional cost sharing for extra high voltage facilities (at 345 kV and above) is insufficient given the reliability impacts of such facilities.”)

⁶⁰ *Midwest Indep. Transmission Sys. Operator, Inc.*, 117 FERC ¶ 61,241 at P 62 (2006).

⁶¹ *See*, Order No. 1000-A, 139 FERC ¶ 61,132 at P 430 (“we clarify that 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 facility, except as provided in this order.”).

⁶² *See*, 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”).

circular reasoning to find support for its local project mantra. Specifically, in Paragraph 84 of the Complaint Denial Order the Commission finds that it is acceptable to exclude Baseline Reliability Projects from competition because Order No. 1000 allowed local projects to be excluded from competition. What did the Commission offer as support for the conclusion that Baseline Reliability Projects are “local”? The fact that the Commission allowed the cost allocation for Baseline Reliability Project to prohibit any measurement of benefits and allocate all costs locally – thus mandating that the projects meet the Order No. 1000 definition of local from a cost allocation perspective!

But even here the Compliant Denial Order misses the mark. The Commission cites as support for its cost allocation determination the fact that Order No. 1000 permitted “an incumbent transmission provider to meet its reliability needs or service obligations *by choosing to build* new transmission facilities that are located solely within its retail distribution service territory or footprint and *that are not submitted for regional cost allocation.*”⁶³ This is not what occurs regarding Baseline Reliability Projects. As Mr. Webb testified, for Baseline Reliability Projects “MISO Staff determines the preferred solutions consistent with Attachment FF, and projects proposed to move forward are recommended to the MISO Board for approval and inclusion in Appendix A of the MTEP.”⁶⁴ If such projects are selected, MISO **directs** the Transmission Owner to build the project and MISO’s Tariff, pursuant to the 2013 Order in ER13-186-000, dictates that the project cannot be submitted for regional cost allocation. This has nothing to do with a transmission owner “**choosing** to build new transmission facilities that are located solely within its retail distribution service territory or footprint and that **are not**

⁶³ Complaint Denial Order at P 84 [emphasis added].

⁶⁴ Webb Testimony at 6, lines 17-19.

submitted for regional cost allocation” as the transmission owner has no choice in building the project and is actually prohibited from seeking regional cost allocation.⁶⁵ Thus, the reference to Order No. 1000’s exception for local projects is misplaced and provides no support for the Commission’s circular logic.

Because the Complaint Denial Order is not consistent with the Commission’s prior determinations on the nature of Baseline Reliability Projects, and the Commission failed to offer a reasoned basis for abandoning that precedent, the Complaint Denial Order is not the result of reasoned decision-making, and as a result is arbitrary and capricious.⁶⁶ This conclusion is supported by the Commission erroneous reliance on Order No. 1000 as supporting the exclusion of Baseline Reliability Projects as local projects.

D. The Complaint Denial Order Reflects Inconsistent Application Of Judicial And Commission Precedent On Cost Causation And Is Arbitrary And Capricious

1. The Cited Quotes From Prior Cost Causation Orders Do Not Support Denial Of The Complaint

The Complaint Denial Order references a variety of prior cost causation precedent but fails to put that precedent in context or tie the referenced citations to the facts at hand. In Paragraph 82, the Commission cites two hallmark cost causation principles: (1) “all approved rates reflect to some degree the costs actually caused by the customer [that] must pay them;”⁶⁷ and (2) a court evaluates compliance with the cost causation principle by “comparing the costs

⁶⁵ While the reference does not fit the Baseline Reliability Projects, it does fit the “Other Project” category where transmission owners voluntarily advance projects and are not required to move forward with those projects.

⁶⁶ *North Carolina Utils. Comm’n v. FERC*, 42 F.3d 659, 666 (D.C. Cir. 1994) (rejecting a FERC order because the Commission did not “sufficiently explain[] its departure from prior cases”)

⁶⁷ Complaint Denial Order at P 82, *citing KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992).

assessed against a party to the burdens imposed or benefits drawn by that party.”⁶⁸ The Complaint Denial Order does not, however, explain how it upholds these principles. The evidence proves that an exclusively location-based cost allocation methodology mandating local cost allocation does not meet these principles across the board. As the Austria Testimony establishes, the type of reliability violations that Baseline Reliability Projects address are “caused” by a variety of flows on the system that are based on system physics, not geographic or ownership boundaries.⁶⁹ Thus the location-based allocation methodology mandating local allocation does not affirmatively tie to the cause for the project or the benefits received.

Mr. Austria further testified that, unlike the location-based methodology currently used, the LODF methodology looks at who caused the need for the upgrade by looking at who benefits from the upgrade. Specifically, an LODF analysis like that presented by the Complainants shows how Baseline Reliability Projects translate 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.”⁷⁰ Indeed, LODF was the mechanism by which MISO and the MISO transmission owners demonstrated their assertion that the “benefits provided by Baseline Reliability Projects

⁶⁸ Complaint Denial Order at P 82, *citing Midwest ISO TOs v. FERC*, 373 F.3d 1361, 1368 (D.C. Cir. 2004).

⁶⁹ Austria Testimony at 9, lines 12-15. Mr. Austria notes that “Only by coincidence do the physics result in flow changes that align with civic boundaries or utility ownership of transmission facilities that are proximate to the BRP.” *Id.*, lines 15-17.

⁷⁰ Austria Testimony at 8:12-14.

are realized primarily in the pricing zone where the Baseline Reliability Project is located”⁷¹ when the LODF analysis happened to correspond with their local benefits assertion, but ask the Commission to ignore LODF when it produces a different beneficiary profile. Cost causation principles prohibit this.

Next, in Paragraph 83, the Commission asserts that “multiple court decisions acknowledge the difficulty of measuring benefits to assess adherence to the cost causation principle, courts ‘have never required a ratemaking agency to allocate costs with exacting precision.’”⁷² As laid out in the Complaint, Pterra Report, Complainants’ Answer and the Austria Testimony, this case is not about a demand for measuring beneficiaries with “exacting precision” but rather that MISO should be required to attempt to measure when: (1) a measurement mechanism exists; and (2) the non-measurement location-based methodology fails basic cost causation principles. There is simply no judicial support for the premise that, when a just and reasonable cost allocation methodology exists, the Commission can nevertheless allow a non-measurement methodology to remain just because courts have acknowledged the difficulty of measuring. The Commission offers no connection between the statement and the denial of the Complaint. This is not reasoned decision-making.

The Commission’s next quote references the judicial holding that courts have not said “the Commission has to calculate benefits to the last penny, or for that matter to the last million

⁷¹ *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.

⁷² Complaint Denial Order at P 83.

or ten million or perhaps hundred million dollars.”⁷³ As Complainants pointed out in their Answer, the quote is taken out of context:

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.[fn]

Here, there is no difficulty in measuring beneficiaries more precisely, as MISO did for years without complaint.⁷⁴

Again, the Commission makes no connection between the cited language, the actual holding of the case, or the facts of the instant case. The Court in the cited case specifically premised its holding on the finding that **if** the Commission “cannot quantify the benefits” of the facilities at issue it was entitled to more deference on the pricing scheme it came up with. Missing from the Complaint Denial Order is a finding that measuring beneficiaries for Baseline Reliability Projects is infeasible.

The next quote provides no bar to the Complaint as it merely recites that “the Commission is ‘not authorized to approve a pricing scheme that requires a group of utilities to

⁷³ Complaint Denial Order at P 83.

⁷⁴ Answer at 20, *citing Ill. Commerce Comm’n v. FERC*, 576 F.3d at 477. *See also Illinois Commerce Commission v. FERC*, 721 F.3d 764 (7th 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*”).

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.”⁷⁵ For the 12 projects specifically referenced in the Complaint, the evidence established misallocated costs to the local zone of 38%, 36%, 100%, 30%, 31%,⁷⁶ 61%, 69%, 57%, 58%, 64%, 28%, and 43%, representing approximately \$300,000,000. For the referenced projects, the local benefits can be considered trivial when compared to the costs being locally allocated. At the very least, the Commission is obligated by the rules of reasoned decision-making to address how these percentages of misallocated cost comport with the quoted precedent.

The Commission asserts “‘the Commission is not bound to reject any rate mechanism that tracks the cost causation principle less than perfectly’ and that the Commission may rationally emphasize other, competing policies and approve measures that do not best match cost responsibility and causation.” This citation is particularly troubling as the Commission failed to articulate what “other, competing policies” that support adherence to a cost allocation methodology that mandates location based allocation when that allocation is, intentionally, inaccurate.⁷⁷ It cannot be the preference for *ex ante* cost allocation methodology as referenced in Order No. 1000 as: (1) the then existing LODF methodology would have fulfilled that goal; (2) the Commission specifically found that the change to the location-based cost allocation methodology was not intended to address Order No. 1000 cost allocation requirements;⁷⁸ (3) the

⁷⁵ Complaint Denial Order at P 83, *citing Ill. Commerce Comm’n v. FERC*, 576 F.3d at 476

⁷⁶ *See supra* footnote 15.

⁷⁷ As noted fully in the complaint, the methodology was intended to prevent competition and was structured to insist on single zone cost allocation, notwithstanding the established inaccuracy of location-based local allocation. Complaint at 46, *citing* MISO and MISO Transmission Owner Transmittal Letter, Docket No. ER13-186-000, at page 11 filed on October 25, 2012.

⁷⁸ *Midwest Independent System Operator, Inc. and MISO Transmission Owners*, 142 FERC ¶ 61,215 at P 519 (2013).

Commission just argued to the D.C. Circuit that getting cost allocation correct was equally as important and compatible with Order no. 1000's preference for *ex ante* cost allocation mechanisms.⁷⁹ Equally important, the location-based cost allocation methodology goes directly against articulated Commission directives in Order No. 1000 that found that the Commission cannot ensure just and reasonable rates without competition and that reliability projects were not exempted from such competition. The D.C. Circuit upheld those determinations.⁸⁰ The Commission has ample evidence that it was correct in believing that competition would ensure just and reasonable rates⁸¹ yet the Complaint Denial Order maintains a category of projects exempted from that competition solely based on an inaccurate cost allocation methodology. The Commission must do more than reference the fact that it is permitted to balance cost allocation and policy goals under the precedent; reasoned decision-making requires that the Commission actually identify the policy on which it is relying.

Finally, the Commission quotes the D.C. Circuit as stating “balancing of the competing goals of reducing monitoring burdens and adopting policies that ensure that cost allocation maximally reflects cost causation is wholly reasonable under the deferential review [that courts]

⁷⁹ See, Brief of Respondent Federal Energy Regulatory Commission, filed August 21, 2020 in United States Court of Appeals for the District of Columbia Circuit in Case Nos. 19-1091 & 20-1039 (consolidated), at 45-47.

⁸⁰ *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁸¹ See *The Brattle Group*, “Cost Savings Offered by Competition in Electric Transmission: Experience to Date and the Potential for Additional Customer Value” (released April 2019)(“Brattle Competition Report”), available at https://brattlefiles.blob.core.windows.net/files/16726_cost_savings_offered_by_competition_in_electric_transmission.pdf, filed with the Commission in Docket No. AD16-18-000 on June 7, 2019, as supplemented by The Brattle Group Response to Concentric Energy Advisors’ Report on Competitive Transmission, August 2019, available at https://brattlefiles.blob.core.windows.net/files/16873_response_to_concentric_energy_advisors_report_on_competitive_transmission.pdf and filed in AD16-18-000 on September 11, 2019.

accord in rate-related matters.”⁸² In the Complaint Denial Order, the Commission identified no “monitoring burdens” it seeks to reduce as a result of using the location-based methodology versus a quantitative methodology (the LODF) that it, in fact, required to be used for MISO’s Informational Filings. Further the reduction of monitoring burdens is countered with a requirement for “adopt[ion] of policies that ensure that cost allocation **maximally reflects** cost causation.” The Commission identified no such balance in the Complaint Denial Order, instead rejecting adoption of a policy that ensures cost allocation maximally reflects cost causation for retention of a policy that refused to even measure adherence to cost causation.

The Commission further departed from precedent in its finding that *ODEC v. FERC* and the *Delaware Decision* offer no support for the Complaint.⁸³ The Commission’s narrow reading of *ODEC v. FERC* and the *Delaware Decision* is unsupported by the facts of those cases and represents an improper departure from precedent.

2. The Commission’s Narrow Reading Of *ODEC v. FERC* Is Not Supported

As to *ODEC v. FERC*, the Commission notes that “[i]n effect, the PJM amendment would have prohibited regional cost allocation for high-voltage transmission projects that have ‘significant regional benefits’ if such transmission projects were included in a regional transmission plan only to satisfy an individual utility’s planning criteria.”⁸⁴ The Commission went on to note that the cost allocation methodology in PJM was found arbitrary because it “denies cost sharing for *all* projects included in the Regional Plan only to satisfy the planning

⁸² Complaint Denial Order at P 83.

⁸³ Complaint Denial Order at P 90.

⁸⁴ Complaint Denial Order at P 91, *citing ODEC v. FERC*, 898 F.3d at 1261.

criteria of individual utilities—including for high-voltage lines.”⁸⁵ The same is true for the location-based cost allocation methodology for Baseline Reliability Projects, as shown in the Complaint. Two of the twelve projects referenced in the Complaint are 345 kV, a project voltage that the Commission previously specifically found has significant regional benefits such that it was appropriate to allocate 20% of the cost of such projects region-wide. Nevertheless, the Commission finds *ODEC* “distinguishable” because it found that

D.C. Circuit’s concern was with the fact that PJM’s cost allocation arbitrarily prevented regional cost allocation for high-voltage projects that the Commission had previously recognized produce significant regional transmission benefits.⁸⁶

Given that this conclusion is also fundamentally true for the Baseline Reliability Project cost allocation, as shown by the Complaint, *ODEC v. FERC* calls for granting the Complaint. In addition, on the very same day as the Complaint Denial Order, the Commission rejected an argument on rehearing that asserted that the Commission expanded *ODEC v. FERC* too far because of an assertion that the case only focused on high voltage projects.⁸⁷ The Commission rejected the argument, finding that it “dismissed that distinction in the March 2020 Regional Order, emphasizing that the basis for the D.C. Circuit’s remand was that the cost causation principle ‘prevents regionally beneficial projects from being arbitrarily excluded from cost sharing.’”⁸⁸ The Complaint Denial Order fails to explain how the regional benefits identified in

⁸⁵ Complaint Denial Order at P 91, *citing ODEC v. FERC*, 898 F.3d at 1261 [emphasis in original].

⁸⁶ Complaint Denial Order at P 93.

⁸⁷ *Midcontinent Independent System Operator, Inc.*, Order Addressing Arguments Raised On Rehearing, 172 FERC ¶ 61,100, (2020) at P 20, *citing* MISO South Regulators Rehearing Request at 14.

⁸⁸ *Id.* at P 20.

the Complaint are not being arbitrarily excluded from cost sharing, the very issue it found that *ODEC v. FERC* addressed.

Even more, the Commission’s effort to distinguish based just on high-voltage facilities is misplaced. The key is not the voltage, but “significant regional benefits.” The Pterra Report established that some Baseline Reliability Projects, both high-voltage 345 kV and above, and projects below 345 kV have “significant regional benefits” that are not recognized by the same location-based cost allocation methodology the D.C. Circuit found problematic in *ODEC v. FERC*. Although the D.C. Circuit reviewed only two specific projects on the Dominion portion of the request for judicial review, in the Old Dominion portion of the review, the entire cost allocation methodology was at issue. The D.C. Circuit did not address only high voltage facilities, but vacated the Commission’s order accepting the cost allocation methodology because it was a wholesale departure from cost causation principles and because 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.”⁸⁹ The similarities between the Baseline Reliability Project location-based cost allocation and the cost allocation methodology rejected by the D.C. Circuit in *ODEC v. FERC* could not be more similar because for Baseline Reliability Projects, like the Form 715 projects in PJM, “the Commission had chosen to replace a cost allocation ‘about which [it] ha[d] expressed no concerns with another one that is less accurate overall, as well as grossly inaccurate with respect to high-voltage projects, in return for no countervailing regulatory benefit.’”⁹⁰ Likewise, by mandating location-based cost allocation, regionally

⁸⁹ *ODEC v. FERC*, 898 F.3d at 1261.

⁹⁰ *Id.*

beneficial projects are “arbitrarily excluded” from regional cost sharing. The Complaint established that the mandatory location-based Baseline Reliability Project cost allocation methodology results in “grossly inaccurate” cost allocation across the voltage spectrum, for certain Baseline Reliability Projects.

Finally, the Commission relies on the fact that the D.C. Circuit referenced as distinguishable the Baseline Reliability Project cost allocation methodology from the methodology it rejected. While true, the Commission misses entirely the fact that what the D.C. Circuit found distinguishable was the Commission’s initial **projection** that the spillover of benefits would be modest. The Complaint established that the projection, although determined appropriate at the time, was wrong. The *ODEC v. FERC* opinion offers no support for the assumption that the D.C. Circuit would find reliability benefits of 38%, 36%, 100%, 30%, 31%, 61%, 69%, 57%, 58%, 64%, 28%, and 43% in zones other than where costs are allocated, representing approximately \$300,000,000 in misallocated costs, as meeting the cost causation requirements. Indeed, the *ODEC v. FERC* opinion suggests the D.C. Circuit will find just the opposite.

3. The Commission’s Effort To Distinguish The *Delaware Decision* Actually Demonstrates Its Similarity To The Complaint

The Commission distinguishes the *Delaware Decision* from the case at hand by focusing on the fact that the *Delaware Decision* addressed an analytically unique stability-based reliability issue from the thermal or voltage related issues for which the solution-based cost allocation methodology based on flows produced appropriate cost allocation. Although the Commission is correct that the nature of the reliability issue that the Artificial Island Project addressed was distinct from other reliability projects in the same PJM class, that issue was only relevant

because the cost allocation methodology employed did not appropriately measure beneficiaries of the project. The Commission held

solely relying on the solution-based DFAX method to allocate all of the costs of Lower Voltage Facilities that address stability-related reliability issues, and 50 percent of the costs of Regional Facilities and Necessary Lower Voltage Facilities that address stability-related reliability issues, *does not allocate the costs of such transmission projects in a manner that is at least roughly commensurate with their benefits.*⁹¹

Here, relying on location alone does not allocate the costs of certain Baseline Reliability Projects in a manner that is at least roughly commensurate with their benefits.

The Commission asserts that this case is distinguishable from Artificial Island because in that case “the load being allocated costs may neither have caused the need for the transmission facility, nor received commensurate benefits from flows.”⁹² Mr. Austria’s Testimony addressed that very point. Mr. Austria testified that it is error to assume that the load in the location of a Baseline Reliability Project is the only load contributing to the problem being addressed because reliability issues do not arise based on geographic or ownership boundaries.⁹³ The Pterra Report, as reflected in the complaint, establishes that for many Baseline Reliability Projects the benefits received by the local zone are not (remotely) commensurate with the allocated costs.⁹⁴

⁹¹ *Delaware Public Service Commission and Maryland Public Service Commission v. PJM Interconnection, L.L.C.*, 164 FERC ¶ 61,035 (2018) at P 38 [emphasis added].

⁹² Complaint Denial Order at 95.

⁹³ Austria Testimony at 9-11.

⁹⁴ As discussed above, Austria’s Testimony conclusively addressed the inference that because a reliability issue is in a specific zone on specific facilities the local zone is the only zone benefiting and thus the false assertion that 100% local cost allocation is appropriate because “BRP’s explicit purpose (and thus, its primary benefit) is to address a specific reliability issue in a transmission owner’s pricing zone.” Complaint Denial Order at 95.

Last, the Complaint Denial Order fails to address the fundamental distinction between the results in *Delaware Decision* and the Complaint Denial Decision: does the Commission believe that its obligation to establish just and reasonable rates is a most of the time standard or not? On rehearing, after initially determining that most of the time was okay, the Commission appropriately held that establishing an anomaly in the results of a generic cost allocation methodology was sufficient to invoke the Commission's authority under Section 206 to remedy the situation. In the Complaint Denial Order the Commission appears to have determined that providing 12 examples of a generic cost allocation methodology failing to appropriately allocate costs is insufficient because the generic methodology works⁹⁵ most of the time. No party disputed 11 of the 12 LODF results, and even for the twelfth the misallocated costs are at least 31%. Without any quantifiable benefit analysis challenging the Pterra Report, the only conclusion is that for the Complaint Denial Order the Commission determined that most of the time is good enough, a determination it specifically rejected in the *Delaware Decision*.

The discussed inaccuracies in the Commission's favorable citation to, or efforts to distinguish, various cost causation precedent make the Complaint Denial Order arbitrary and capricious. *See, Hatch v. FERC*, 654 F.2d 825, 834-35 (D.C. Cir. 1981)(FERC is required to provide a reasoned explanation for failure to adhere to its own precedents); *see also PG&E Gas Transmission v. FERC*, 315 F.3d 383, 390 (D.C. Cir. 2003)("FERC's failure to come to terms with its own precedent reflects the absence of a reasoned decisionmaking process"); *La. Pub. Serv. Comm'n v. FERC*, 184 F.3d 892, 897 (D.C. Cir. 1999)("for the agency to reverse its position in the face of a precedent it has not persuasively distinguished is quintessentially arbitrary and capricious"); *North Carolina Utils. Comm'n v. FERC*, 42 F.3d 659, 666 (D.C. Cir.

⁹⁵ Austria Testimony at 9-11.

1994) (rejecting a FERC order because the Commission did not “sufficiently explain[] its departure from prior cases”)

E. The Commission Acted Arbitrarily And Capriciously In Ignoring The Lack Of Multi-Value Projects In MISO

The Complaint Denial Order held that “Complainants are correct that MISO’s prediction that Multi-Value Projects and Market Efficiency Projects would displace BRPs was a ‘key factor’ in the Commission’s decision in the BRP Order”⁹⁶ Despite this, the Commission found that the “prediction likewise does not provide grounds to grant the Complaint.”⁹⁷ In ignoring the deficiency of MISO’s prediction, the Commission completely missed the point. That point is that without Multi-Value projects as predicted by MISO and accepted by the Commission as persuasive, there is no regional cost allocation methodology for reliability projects in MISO, and thus no basis on which to circumvent the requirement of Order No. 1000 that prohibits the exclusion of an entire category of projects from the potential for regional cost allocation.⁹⁸ In its Order accepting the original cost allocation change for Baseline Reliability Projects, the Commission held that Order No. 1000’s prohibition was not dispositive “since transmission projects with reliability benefits selected in the regional plan for purposes of cost allocation are covered by MVPs.”⁹⁹

Although the Commission, ever hopeful despite overwhelming evidence to the contrary, asserts that “there is potential for expanded Market Efficiency Project opportunities in the

⁹⁶ Complaint Denial Order at 89.

⁹⁷ *Id.*

⁹⁸ Order No. 1000, FERC Stats. & Regs. ¶ 31,323 at P 690.

⁹⁹ *Midwest Independent System Operator, Inc. and MISO Transmission Owners*, 142 FERC ¶ 61,215 at P 519 (2013).

future”¹⁰⁰ that hope is irrelevant to the violation of Order No. 1000 because it is only the Multi-Value Project category that provided the regional cost allocation mechanism for reliability projects. In this regard the Commission conflates the references to the predicted expansion of Market Efficiency Projects and Multi-Value Projects as reducing the expected number of Baseline Reliability Projects, and the Commission’s separate finding that removal of regional cost allocation for Baseline Reliability Projects was permitted under Order No. 1000 because Multi-Value Projects meant MISO retained a regional cost allocation option for reliability based projects.

The Commission reiterated this finding in arguing to the Seventh Circuit Court of Appeals against a challenge to the lack of a regional cost allocation methodology for Baseline Reliability Projects violated Order No. 1000. The Commission argued:

Moreover, as already discussed supra pp. 23-24, the Commission (and the System Operator) expected that, going forward, Baseline Reliability Projects would be displaced by regionally-allocated Multi-Value Projects or Market Efficiency Projects. See Initial Order at P 521, JA _____. LS Power contends (Br. at 47) that this expectation was belied by the outcome of the 2012 planning process, in which no Multi-Value Projects were selected. Of course, 17 such projects, totaling \$5.5 billion, had been approved in 2010-11 (see Br. 48) — and the Commission’s Order No. 1000 rulemaking appropriately focused on the long view, rather than on any single year. See Order No. 1000 at PP 44-46. As the D.C. Circuit found, the Commission acted on substantial evidence that government and industry experts anticipate considerable expansion of the transmission grid by 2030. *South Carolina*, 762 F.3d at 65-67. Indeed, as this Court noted in *Illinois II*, 721 F.3d at 774, that first group of Multi-Value Projects was “just the beginning.”¹⁰¹

¹⁰⁰ Complaint Denial Order at P 89.

¹⁰¹ Brief for Respondent Federal Energy Regulatory, filed June 5, 2015 in the United States Court of Appeals for the Seventh Circuit in Case No. 14-2533 at page 39 (“Commission Brief to 7th Circuit”).

As the Complainants' unrebutted evidence established, the number of Multi-Value Projects has been zero since the Commission found that the category provided a regional cost allocation option for reliability based transmission additions, and thus a free pass on the Order No. 1000 requirement. The Complainants' Answer further addressed the fact that there was no proof, or no longer even an assertion, that the number of Multi-Value Projects since that time, zero, is expected to change in the future.¹⁰² Indeed, with the addition of MISO South, region-wide Multi-Value Projects are highly unlikely. With 507 Baseline Reliability Projects and 0 Multi-Value Projects since the cost allocation change, there is not credible evidence the Multi-Value Project category provides a mechanism for regional cost allocation for reliability based projects in compliance with Order No. 1000.

In an apparent effort to avoid this conclusion, the Commission asserts that it required MISO to submit an informational filing regarding the numbers of respective project types. Of course the Commission correctly notes that requirement, but ignores the purpose of the informational filing. As the Commission informed the Seventh Circuit Court of Appeals in defending its decision to allow the Multi-Value Project category to be the only category of reliability based projects subject to a regional cost allocation methodology: "Furthermore, the Commission agreed with the System Operator that provisions in its tariff make it likely that regional projects will displace Baseline Reliability Projects in future planning cycles, and required further filings *to monitor the outcomes of those processes.*"¹⁰³ The Commission went on to state: the Commission will monitor the results of the System Operator's regional planning process. Thus, the Commission sufficiently explained its consideration of past projects, *its*

¹⁰² Complainants Answer at 37-40.

¹⁰³ Commission Brief to 7th Circuit at 18 [emphasis added].

*expectations for future planning, and its ongoing review of actual outcomes.”*¹⁰⁴ The Complaint and Complainants’ Answer established that ‘actual outcomes’ do not meet the basis for the initial conclusion that the Multi-Value Project category provides a viable regional cost allocation methodology for reliability based projects in MISO that is sufficient to meet the requirements of Order no. 1000. The Complaint Denial Order offers no explanation as to why, notwithstanding the unequivocal evidence and its prior declaration that it would monitor the actual results, the Commission chose to do nothing. The Complaint Denial Order failed to address the requirements of the Commission’s prior orders and the violation of Order No. 1000.

V. CONCLUSION

Based on the foregoing, the Complainants request that the Commission grant rehearing and grant the Complaint by: (a) finding that the location-based cost allocation methodology for BRPs is unjust and unreasonable, (b) establishing a just and reasonable replacement rate (such as LODF), and (c) requiring MISO to revise all Tariff, Transmission Owner Agreement or other provisions that prohibit regional cost allocation or competition for Baseline Reliability Projects. As noted herein, if the Commission disagrees with the replacement rate proposed by the Complainants, it would be within the Commission’s discretion during the remedy phase of this proceeding to fashion a more limited or targeted remedy that it deems more appropriate, so long as supported by reasoned decisionmaking. But it is not within the Commission’s discretion to simply ignore the fact that the current cost allocation methodology has resulted in a rate that is clearly and indisputably unjust and unreasonable for a subset of the Baseline Reliability Projects within MISO, in violation of the Federal Power Act.

¹⁰⁴ *Id.* at 40.

August 27, 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

Kenneth R. Stark
100 Pine Street
Harrisburg, PA 17101
Tel. (717) 237-5378
Email: 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

***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
rfallon@efenergylaw.com
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 27th day of August 2020.

By: /s/ Michael R. Engleman

Engleman Fallon, PLLC

1717 K Street, NW. Suite 900

Washington, DC 20006

Tel. (202) 464-1330

Email: mengleman@efenergyllaw.com