

137 FERC ¶ 61,074  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Jon Wellinghoff, Chairman;  
Philip D. Moeller, John R. Norris,  
and Cheryl A. LaFleur.

Midwest Independent Transmission  
System Operator, Inc.

Docket Nos. ER10-1791-001  
ER10-1791-002

ORDER DENYING IN PART AND GRANTING IN PART REHEARING,  
CONDITIONALLY ACCEPTING COMPLIANCE FILING,  
AND DIRECTING FURTHER COMPLIANCE FILINGS

(Issued October 21, 2011)

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1. On December 16, 2010, the Commission issued an order conditionally accepting Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and Midwest ISO Transmission Owners<sup>1</sup> (collectively, Filing Parties) proposed revisions to the

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<sup>1</sup> For purposes of this filing, Midwest ISO Transmission Owners include Ameren Services Company, as agent for Union Electric Company, Central Illinois Public Service

(continued...)

Midwest ISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (Tariff)<sup>2</sup> for filing effective July 16, 2010.<sup>3</sup> The Commission found that the Multi Value Project (MVP) methodology (MVP Proposal) would identify projects that provide regional benefits and allocate the costs of those projects accordingly, and therefore was just and reasonable. The Commission also found Filing Parties' proposal to maintain the existing cost reimbursement policy for network upgrades, along with the addition of the new classification of projects designated as Shared Network Upgrades (SNU), to be just and reasonable. Finally, the Commission ordered Midwest ISO to make a compliance filing.<sup>4</sup>

2. Multiple parties<sup>5</sup> submitted timely requests for rehearing and clarification of the MVP Order. In this order we deny in part and grant in part the requests for rehearing and clarification. We also conditionally accept Midwest ISO's compliance filing, subject to a further compliance filing.

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Company, Central Illinois Light Co., and Illinois Power Company; American Transmission Company LLC (ATC); Dairyland Power Cooperative; Duke Energy Corporation for Duke Energy Ohio, Inc., Duke Energy Indiana, Inc., and Duke Energy Kentucky, Inc.; Great River Energy; Minnesota Power (and its subsidiary Superior Water, L&P); Montana-Dakota Utilities Co.; Northern Indiana Public Service Company; Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail Power Company; Southern Indiana Gas & Electric Company; and Southern Minnesota Municipal Power Agency.

<sup>2</sup> Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1. When referring to the applicants, this order uses "Filing Parties" and "Midwest ISO" interchangeably unless otherwise noted.

<sup>3</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,221 (2010) (MVP Order).

<sup>4</sup> *But see Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 76 Fed. Reg. 49842 (Aug. 11, 2011), FERC Stats. & Regs. ¶ 31,323 (2011). *See infra* P 188.

<sup>5</sup> The parties who submitted requests for rehearing of the MVP Order are listed in the Appendix to this order. The party abbreviations listed in the Appendix will be used throughout this order.

## I. Overview

### A. Midwest ISO Cost Allocation Filings

3. On July 9, 2009, in Docket No. ER09-1431-000, Midwest ISO and certain Midwest ISO Transmission Owners (July 9 Applicants) filed, pursuant to section 205 of the Federal Power Act (FPA),<sup>6</sup> an interim cost allocation proposal (Interim Cost Allocation Proposal) to address the unanticipated and inequitable consequences of the then-effective Regional Expansion Criteria and Benefits (RECB) cost allocation rules for generator interconnection projects. In that filing, July 9 Applicants explained that the proposed revisions were intended to ensure that more interconnection-related upgrade costs were allocated to the parties that cause, or benefit from, such costs.<sup>7</sup> July 9 Applicants stated that the proposed changes constituted the first, interim phase of an ongoing refinement of the RECB cost allocation principles. They noted that a thorough review was currently underway in the Midwest ISO stakeholder process and that Midwest ISO had previously empowered the RECB Task Force to address, in phases, the transmission cost allocation issues highlighted in a 2008 Midwest ISO report.<sup>8</sup> In Phase I, the task force would address near-term issues; Phase II would involve a comprehensive look at transmission cost allocation.<sup>9</sup> Midwest ISO anticipated that Phase II would culminate with a Tariff filing on or about July 15, 2010.<sup>10</sup>

4. The Commission accepted the Interim Cost Allocation Proposal conditioned upon July 9 Applicants meeting their commitment to file superseding Tariff revisions on or before July 15, 2010.<sup>11</sup> In the October 23, 2009 Order, the Commission recognized that cost allocation is one of the most difficult and contentious issues currently facing the Midwest ISO region, and that stakeholders, including state regulators, load-serving entities, transmission owners and project developers, had been working for months on

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<sup>6</sup> 16 U.S.C. § 824 (2006).

<sup>7</sup> July 9 Applicants July 9, 2009 Filing, Transmittal Letter at 2.

<sup>8</sup> July 9 Applicants July 9, 2009 Filing, Transmittal Letter at 6-7.

<sup>9</sup> July 9 Applicants July 9, 2009 Filing, Transmittal Letter at 7.

<sup>10</sup> July 9 Applicants July 9, 2009 Filing, Transmittal Letter at 4.

<sup>11</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,060 (2009) (October 23, 2009 Order).

issues concerning regional planning and transmission cost allocation.<sup>12</sup> The Commission provided guidance to Midwest ISO and its stakeholders, explaining that “stakeholders may take a comprehensive approach to evaluating transmission needs by considering what upgrades are needed in light of load growth forecasts, aggregate generator interconnection requests, reliability and economic needs and benefits, and state resource policies.”<sup>13</sup> The Commission also noted “the need for flexibility in developing appropriate cost allocation methods related to interconnection of resources as well as for transmission facilities in general” and stated that stakeholders should take into account the Commission’s previous findings in Order No. 890 regarding transmission planning and cost allocation.<sup>14</sup>

5. In accordance with the October 23, 2009 Order, Filing Parties filed the MVP Proposal on July 15, 2010. Filing Parties explained that the proposed Tariff changes were part of an ongoing, comprehensive review of the RECB transmission cost allocation methodologies.<sup>15</sup> As described in further detail below, Filing Parties proposed to establish a new category of transmission projects, MVPs, and to maintain the Interim Cost Allocation Proposal (the interim generator interconnection cost allocation policy proposed in the July 9, 2009 filing and accepted by the Commission in the October 23, 2009 Order). Filing Parties also proposed to retain the existing cost allocation methodologies for Baseline Reliability Projects (as approved in the RECB I proceeding<sup>16</sup>) and Market Efficiency Projects (approved under the name Regionally Beneficial Projects in the RECB II proceeding<sup>17</sup>) until such time as their comprehensive review is completed.

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<sup>12</sup> October 23, 2009 Order, 129 FERC ¶ 61,060 at P 2.

<sup>13</sup> October 23, 2009 Order, 129 FERC ¶ 61,060 at P 60.

<sup>14</sup> October 23, 2009 Order, 129 FERC ¶ 61,060 at P 59 (citing *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, FERC Stats. & Regs. ¶ 31,241, *order on reh’g*, Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 (2007), *order on reh’g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh’g*, Order No. 890-C, 126 FERC ¶ 61,228 (2009), *order on reh’g*, Order No. 890-D, 129 FERC ¶ 61,126 (2009)).

<sup>15</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 2.

<sup>16</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,106, *order on reh’g*, 117 FERC ¶ 61,241 (2006) (RECB I Order).

<sup>17</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209 (RECB II

(continued...)

6. Filing Parties explained that the MVP Proposal was the result of more than nineteen months of Midwest ISO stakeholder and RECB Task Force discussions in close coordination and in parallel with the OMS Cost Allocation and Regional Planning (CARP) working group<sup>18</sup> and various interested groups responsible for evaluating Midwest ISO's transmission planning and generator interconnection processes.<sup>19</sup> According to Filing Parties, during the Phase II transmission cost allocation discussions, Midwest ISO and its stakeholders evaluated numerous cost allocation alternatives, including an injection/withdrawal proposal, a highway/byway proposal, a proposal supported by certain Midwest ISO Transmission Owners and an OMS CARP proposal.<sup>20</sup>

7. As the July 15, 2010 deadline approached, the Midwest ISO Advisory Committee<sup>21</sup> considered and took action on three motions relating to alternative RECB transmission cost allocation methodologies that had previously been discussed at the RECB Task Force meetings.<sup>22</sup> The first motion concerned a proposal developed by Midwest ISO that would: 1) allocate 20 percent of the costs of MVPs to generators

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Order), *order on reh'g*, 120 FERC ¶ 61,080 (2007) (RECB II Rehearing Order). In the July 15, 2010 Filing, Midwest ISO proposed to change the name "Regionally Beneficial Projects" to "Market Efficiency Projects." Filing Parties July 15, 2010 Filing, Transmittal Letter at 4.

<sup>18</sup> OMS is a regional state committee whose membership is composed of the state public utility regulators that have jurisdiction over entities participating in Midwest ISO. CARP is comprised of one Commissioner (or his or her proxy) from each of the Midwest ISO member states. CARP meetings are open to the public, but active participation is limited to the OMS representatives.

<sup>19</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 2. The work of these stakeholder groups and the involvement of the Midwest ISO transmission owners is detailed in information reports Midwest ISO filed pursuant to the October 23, 2009 Order.

<sup>20</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 8.

<sup>21</sup> The Midwest ISO Advisory Committee is Midwest ISO's highest stakeholder forum and consists of twenty-three representatives from various stakeholder groups. The Advisory Committee provides information and advice to Midwest ISO's independent Board of Directors on matters of concern to the Advisory Committee or its constituents' stakeholder groups. The Advisory Committee's votes are sector-weighted.

<sup>22</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 10.

through a demand-based charge and 80 percent to load through an energy-based charge, and 2) maintain the Interim Cost Allocation Proposal approved in the October 23, 2009 Order.<sup>23</sup> The second motion related to a proposed methodology supported by OMS CARP that would: 1) allocate 20 percent of the costs of Unique Purpose Projects<sup>24</sup> to generators through a demand-based charge and 80 percent to load through an energy-based charge and 2) use a “higher of” allocation for generator interconnection charges.<sup>25</sup> The third motion related to a proposal supported by a group of transmission owners that would: 1) allocate 100 percent of the costs of Unique Purpose Projects to load through a demand-based charge and 2) modify the Interim Cost Allocation Proposal to increase to 20 percent the regional cost sharing of facilities at voltages 345 kV or higher. According to Filing Parties, the Midwest ISO Advisory Committee adopted the third motion, and the MVP Proposal is generally consistent with that motion.<sup>26</sup>

## **B. MVP Proposal**

8. Filing Parties explain that Midwest ISO and its stakeholders fully considered the October 23, 2009 Order’s directives in developing the MVP Proposal.<sup>27</sup> They state that the MVP Proposal recognizes evolving industry and public policy conditions requiring the development of a new paradigm to facilitate the development of new transmission facilities, including the accommodation of renewable energy and other generating facilities that may be location-constrained, as well as the construction of new transmission facilities to address reliability needs and economic benefits on a regional basis.<sup>28</sup> Filing Parties state that these revisions represent broad stakeholder consensus,

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<sup>23</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 10.

<sup>24</sup> Unique Purpose Projects were described as projects that would be developed primarily due to policy drivers and would be considered regional in nature. Planning of these projects would occur in the Midwest ISO planning process. Midwest ISO May 28, 2010 Informational Report, Tab C, Meeting Minutes from the RECB Task Force meetings from February 2010 through May 2010, March 11, 2010 Meeting, Docket No. ER09-1431-000.

<sup>25</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 10-11.

<sup>26</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 11.

<sup>27</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 15.

<sup>28</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 15.



equitably balance the interests of all parties, and will offer the greatest overall benefits for the Midwest ISO region.<sup>29</sup>

9. The MVP Proposal establishes a new transmission project and cost allocation category, MVP, for projects that “enable the reliable and economic delivery of energy in support of documented energy policy mandates or laws that address, through the development of a robust transmission system, multiple reliability and/or economic issues affecting multiple Midwest ISO transmission zones.”<sup>30</sup> Based on the regional nature of these projects, Filing Parties proposed to allocate the costs of MVPs to all load in, and exports from, Midwest ISO on a postage-stamp basis. Pursuant to the MVP Proposal, in order to qualify as an MVP, a project must meet at least one of the following three criteria (MVP Criteria):

- Criterion 1 – [An MVP] must be developed through the transmission expansion planning process for the purpose of enabling the Transmission System to reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation. The MVP must be shown to enable the transmission system to deliver such energy in a manner that is more reliable and/or more economic than it otherwise would be without the transmission upgrade.<sup>31</sup>
- Criterion 2 – [An MVP] must provide multiple types of economic value across multiple pricing zones with a Total MVP Benefit-to-Cost ratio of 1.0 or higher where the Total MVP Benefit-to-Cost [R]atio is described in [s]ection II.C.6 of [ ] Attachment FF. The reduction of production costs and the associated reduction of [Locational Marginal Prices (LMP)] resulting from a transmission congestion relief project are not additive and are considered a single type of economic value.<sup>32</sup>

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<sup>29</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 11.

<sup>30</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 2.

<sup>31</sup> Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451A.

<sup>32</sup> Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff,

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- Criterion 3 – [An MVP] must address at least one Transmission Issue associated with a projected violation of a [North American Electric Reliability Corporation (NERC)] or Regional Entity standard and at least one economic-based Transmission Issue that provides economic value across multiple pricing zones. The project must generate total financially quantifiable benefits, including quantifiable reliability benefits, in excess of the total project costs based on the definition of financial benefits and Project Costs provided in [s]ection II.C.6 of Attachment FF.<sup>33</sup>

10. In addition to meeting at least one of the MVP Criteria, MVPs must also meet the following criteria, or they will be excluded from consideration for MVP transmission cost allocation (Exclusion Criteria):

- Transmission projects must be evaluated through Midwest ISO's transmission planning process and approved for construction by the Midwest ISO Board of Directors prior to the start of construction.<sup>34</sup>
- Facilities associated with projects considered for MVP cost allocation must not be in service, under construction, or approved for construction by the Midwest ISO Board of Directors prior to July 16, 2010, or the date the constructing entity becomes a Midwest ISO transmission owner, whichever is later.
- A proposed transmission project must not contain any transmission facilities listed in Attachment FF-1 of the Tariff.<sup>35</sup>
- The total capital cost of the transmission project must be greater than or equal to the lesser of \$20 million or 5 percent of the constructing transmission owner's contemporaneously reported net transmission plant.

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Fourth Revised Vol. No. 1, Original Sheet No. 3451A.

<sup>33</sup> Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451B.

<sup>34</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 22. Filing Parties note that construction does not include preliminary site and routine selection activities.

<sup>35</sup> Attachment FF-1 includes a list of projects that were excluded from cost sharing during the RECB I proceeding.

- The transmission project must include the construction or improvement of transmission facilities operating above 100 kV.<sup>36</sup>

11. In addition, the following cannot qualify for MVP cost allocation:

- Any Network Upgrade cost associated with constructing an underground or underwater transmission line above and beyond the cost of a feasible alternative overhead transmission line providing comparable benefits; and
- Any direct current transmission line, and associated terminal equipment, that is not under the direct functional control of Midwest ISO and/or is operated in a manner that requires specific users to subscribe for DC Transmission Service.<sup>37</sup>

12. The MVP Proposal also retains the Interim Cost Allocation Proposal accepted in the October 23, 2009 Order, but includes a new class of interconnection projects, SNU. SNU narrow the cost burden faced by an initial generator interconnection customer that funds a network upgrade by requiring subsequent interconnection customers that benefit from the same upgrade to contribute to the costs of such upgrade. According to Filing Parties, SNU will resolve the “first mover/late comer” issues faced by interconnecting generators that results from the “lumpiness” of transmission upgrades.<sup>38</sup> The SNU classification builds on the existing Common Use Upgrade classification in the Tariff, which allows several known beneficiaries of a network upgrade to share the costs of these upgrades in advance. The SNU category expands this concept to assign costs to beneficiaries who were not known at the time of the upgrade.<sup>39</sup> If a project is designated as an SNU, and later found to benefit subsequent interconnection customers, then the interconnection customer that originally funded such project would be eligible for contributions from the late-coming interconnection customers.

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<sup>36</sup> The costs of facilities at or below 100 kV could be included in the cost allocation for an MVP where construction or operation of the MVP would impact facilities operating at or below 100 kV. MVP Order, 133 FERC ¶ 61,221 at P 31 (citing Filing Parties July 15, 2010 Filing, Curran Test. at 31).

<sup>37</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 22-23.

<sup>38</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 2.

<sup>39</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 38.

13. Under the MVP Proposal, MVP costs are recovered through a system usage (i.e., a per-MWh) charge allocated to all load within, and exports from, Midwest ISO.<sup>40</sup> The charge, called the MVP usage rate, would be used to recover the MVP annual revenue requirement from monthly withdrawals, exports, and wheel-through transactions, as described and calculated in proposed Attachment MM of the Tariff. According to Filing Parties, regional cost-sharing for MVP projects avoids the disproportionate impacts to native load in prime wind-power development areas and improves the region's ability to attract new generation that fulfills public policy goals.<sup>41</sup> Further, Filing Parties claimed that the MVP cost allocation would not cause market distortions, as might result from imposing a charge on generators and import transactions. Although there could be market distortions from the proposed export charge, Filing Parties argued that charging exports was necessary to: 1) avoid providing an undue advantage to external loads that use Midwest ISO's transmission system; and 2) place market participants serving external loads in a comparable position to Midwest ISO loads. Filing Parties acknowledged that Midwest ISO may need to modify the Financial Transmission Right and Auction Revenue Right allocation processes so that the benefits of MVP transmission would be similarly socialized.<sup>42</sup>

### C. MVP Order

14. On December 16, 2010, the Commission conditionally accepted Filing Parties' proposed Tariff revisions for filing effective July 16, 2010. The Commission found that the MVP methodology will identify projects that provide regional benefits and allocate the costs of those projects accordingly. The Commission found that the proposed MVP methodology is an important step in facilitating investment in new transmission facilities to effectively and efficiently integrate the various Midwest ISO utility systems and generation resources into a robust regional system, including renewable generation resources, to further support documented energy policy mandates or laws, reduce congestion, and accommodate new or growing loads. The Commission also found the proposal to maintain the interim cost allocation policy for network upgrades, along with the addition of SNU's, to be appropriate, as it provides a better balance for allocating cost responsibilities for large network upgrades associated with interconnecting with the electric transmission grid.

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<sup>40</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 2.

<sup>41</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 3.

<sup>42</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 27-28.

15. The Commission's acceptance of the filing was conditioned on Filing Parties submitting a compliance filing that: 1) states in the Tariff that Midwest ISO will review MVPs on a portfolio basis; 2) revises the Tariff to ensure that the MVP usage rate is not applied to export or wheel-through transactions that sink in the PJM region; 3) provides an explanation as to how the proposed Tariff language relating to Monthly Net Actual Energy Withdrawal and Demand Response Resources and Emergency Demand Response resources is consistent with the rate design objectives stated by Filing Parties, and why it does not result in double netting; and 4) revises the Tariff to clarify that the divisor of the MVP usage charge in Attachment MM reflects the MWhs of grandfathered service provided by each transmission owner to reflect an allocation of the costs of MVPs recovered under grandfathered agreements. The Commission also required Filing Parties to submit a compliance filing no later than June 1, 2011 to describe what changes are required to its allocation of Financial Transmission Rights and Auction Revenue Rights in order to reflect the usage-based allocation of MVP costs. Finally, the Commission required Midwest ISO to file ongoing annual informational reports with the Commission describing the selection of MVPs, including the achievements and shortcomings of the MVP selection process, after each full planning cycle has been completed.

16. The MVP Order explains that the MVP Proposal presents a functional approach to transmission planning, and that evaluation of MVPs will become a component of the Commission-approved Midwest ISO transmission planning process.<sup>43</sup> The Commission stated that consistent with cost allocation precedent, it is appropriate for all users of the integrated grid to share in the costs of programs and activities that benefit the grid as a whole.<sup>44</sup> The Commission explained that the studies Midwest ISO used to analyze candidate MVPs provide "an articulable and plausible reason to believe that benefits are at least roughly commensurate" with costs,<sup>45</sup> and focused primarily on the ways in which the MVP Proposal will ensure regional benefits.<sup>46</sup>

17. In conditionally accepting the MVP Proposal, the Commission also relied upon Filing Parties' concept for the portfolio approach, which they described in their answer to

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<sup>43</sup> MVP Order, 133 FERC ¶ 61,221 at P 193.

<sup>44</sup> MVP Order, 133 FERC ¶ 61,221 at P 196 (citing *Midwest ISO Transmission Owners v. FERC*, 373 F.3d 1361 (D.C. Cir. 2004) (*Midwest ISO Transmission Owners*)).

<sup>45</sup> MVP Order, 133 FERC ¶ 61,221 at P 227 (quoting *Illinois Commerce Commission v. FERC*, 576 F.3d 470, 477 (7th Cir. 2009) (*Illinois Commerce Commission*)).

<sup>46</sup> MVP Order, 133 FERC ¶ 61,221 at P 228-38.

the protests and comments. The Commission found that the portfolio approach would “help Midwest ISO to prioritize its transmission expansion projects in such a way as to ensure global benefits from the projects afforded regional cost sharing and maximize the number of system users who will share in the benefits.”<sup>47</sup> But the Commission stated: “We are concerned, however, that Midwest ISO has not stated its portfolio approach in the Tariff. We therefore require Midwest ISO to submit . . . a compliance filing to revise the Tariff to state that MVPs will be reviewed on a portfolio basis.”<sup>48</sup>

18. The Commission rejected claims from protestors that: 1) MVPs located in Michigan (e.g., the Michigan Thumb Project) that are driven by the in-state siting requirement of Michigan’s renewable portfolio standard would not benefit load located outside of Michigan; and 2) MVPs located outside of Michigan would not benefit Michigan load because Michigan is electrically isolated from the rest of Midwest ISO. The MVP Order also rejects claims that it is inappropriate to allocate costs for Criterion 1 projects to states without documented energy policy mandates or laws. In addition, the Commission noted its acceptance of a functional method of determining which projects should qualify as MVPs, and that it was not determining whether any projects meet those qualifications. The Commission found that the portfolio approach would address these concerns and that protestors did not acknowledge the potential for transmission expansion projects in one area to improve the entire system. The Commission determined that load, both inside and outside of Michigan and across Midwest ISO, will continue to receive “broad regional benefits from the integrated Midwest ISO transmission system and the broader Midwest ISO/PJM bulk power system and its regional pricing structure.”<sup>49</sup>

19. The MVP Order states that the Midwest ISO Transmission Expansion Planning (MTEP) stakeholder process will provide a venue for the cost-benefit calculation of individual MVPs,<sup>50</sup> and for thorough, transparent consideration of which transmission projects should receive regional cost allocation.<sup>51</sup> The Commission explained that Midwest ISO and stakeholders will review each candidate MVP on an individual basis in

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<sup>47</sup> MVP Order, 133 FERC ¶ 61,221 at P 221.

<sup>48</sup> MVP Order, 133 FERC ¶ 61,221 at P 223.

<sup>49</sup> MVP Order, 133 FERC ¶ 61,221 at P 222.

<sup>50</sup> MVP Order, 133 FERC ¶ 61,221 at P 203.

<sup>51</sup> MVP Order, 133 FERC ¶ 61,221 at P 194.

order to assess its benefits,<sup>52</sup> and that the portfolio approach will help to ensure that the benefits, as well as the costs, of the projects accrue throughout the Midwest ISO region.<sup>53</sup>

20. The MVP Order finds that, contrary to some protestors' arguments, Criterion 1 is neither too broad nor too vague; that any candidate MVP must be subject to an open, transparent analysis in the MTEP of the costs and regional benefits it will provide; and that what constitutes compliance with "documented energy policy mandates or laws" of various jurisdictions is a question that "should be addressed by Midwest ISO and its stakeholders, which include those jurisdictions."<sup>54</sup> The MVP Order states that Criterion 2 ensures that projects qualifying for MVP status under its conditions generally will have broad regional benefits and that this criterion protects against projects with only localized benefits.<sup>55</sup> The MVP Order states that Criterion 3 "applies a tough standard to ensure qualifying projects are in fact . . . beneficial to the region in addressing a projected reliability violation and in providing regional economic benefits."<sup>56</sup>

21. Finally, the Commission concluded that the Interim Cost Allocation Proposal remained just and reasonable, particularly when viewed in light of the MVP and SNU classifications. The Commission reasoned that the MVP Proposal struck an appropriate balance by retaining the Interim Cost Allocation Proposal while allowing a means for generators to mitigate those costs by choosing to site their projects closer to MVP facilities.

## **II. Procedural Matters**

22. Requests for rehearing of the MVP Order were filed by the parties listed in the Appendix to this order.

23. Answers to the requests for rehearing were filed by the parties listed in the Appendix. Rule 713(d)(1) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2011), prohibits answers to requests for rehearing. Accordingly we will reject all of the answers to the requests for rehearing.

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<sup>52</sup> MVP Order, 133 FERC ¶ 61,221 at P 207.

<sup>53</sup> MVP Order, 133 FERC ¶ 61,221 at P 202.

<sup>54</sup> MVP Order, 133 FERC ¶ 61,221 at P 208-09.

<sup>55</sup> MVP Order, 133 FERC ¶ 61,221 at P 213.

<sup>56</sup> MVP Order, 133 FERC ¶ 61,221 at P 215.

24. On March 7, 2011, MICH-CARE filed a pleading that it styles “Motion to Supplement Comments, Comments and Request for Commission directive to the Filing Parties to Amplify, or in the Alternative, Conditional Protest, & Answer.” In it, MICH-CARE adopts the rehearing positions of other parties, and requests changes or clarifications to some of the determinations of the MVP Order. We therefore deem MICH-CARE’s pleading to be an untimely request for rehearing, and we will reject it.

25. On June 10, 2011, Hoosier-SIPC filed a motion to lodge the testimony of Clair J. Moeller, which Midwest ISO submitted in Docket No. ER11-3728-000 on June 3, 2011. On July 19, 2011, Midwest ISO filed a motion to strike or, alternatively to answer, Hoosier-SIPC’s motion to lodge. On August 3, 2011, Hoosier-SIPC filed an answer to Midwest ISO’s motion and answer. We find that it is inappropriate to accept new evidence after issuance of a dispositive order, because doing so would effectively deny parties an opportunity to respond to this evidence.<sup>57</sup> Accordingly, we will deny the motion to lodge.

### **III. The MVP Cost Allocation Proposal is Just and Reasonable and Consistent with Cost Causation Principles**

#### **A. Summary of Findings**

26. As the Commission noted in the MVP Order, changing operational circumstances in the Midwest ISO region have prompted a transition from relatively localized transmission system planning to regional planning.<sup>58</sup> This shift to regional planning has enabled Midwest ISO to consider federal and state policy initiatives, such as renewable portfolio standards, and a focus by Congress and the Commission on promoting reliability and economically efficient transmission infrastructure development. The Commission has also recognized that knowing how the costs of new transmission facilities will be allocated is critical to the efficient development of new infrastructure because it is more likely that transmission providers and customers will support projects where it is clear who will pay what costs.<sup>59</sup> Against this background, in the MVP Order, the Commission accepted the MVP Proposal, finding that it “presents the Commission with a functional approach to transmission planning – a package of processes intended to enable the development of transmission facilities that will increase the reliable and

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<sup>57</sup> See *Devon Power, LLC*, 117 FERC ¶ 61,133, at P 76 (2006).

<sup>58</sup> MVP Order, 133 FERC ¶ 61,221 at P 190.

<sup>59</sup> Order No. 890, FERC Stats & Regs. ¶ 31,241 at P 557.



economic improvement of the transmission system, and support policy initiatives that drive transmission planning processes.”<sup>60</sup>

27. We are not persuaded by the arguments raised on rehearing that we should revisit or reverse the findings of the MVP Order. Accordingly, we affirm the Commission’s acceptance of the MVP Proposal. On rehearing, we continue to find that the MVP Proposal is just and reasonable, and that it represents a package of reforms that will enable Midwest ISO and its stakeholders to identify transmission projects that provide sufficient regional benefits to warrant regional cost allocation. As discussed in further detail below, we find the challenges to the MVP Order unpersuasive.

28. First, we reject claims that the MVP Proposal is inconsistent with cost causation principles and *Illinois Commerce Commission*. That case does not, as some parties argue, alter the analytical framework employed by the Commission to ensure that transmission cost allocation methodologies are consistent with cost causation principles. In *Illinois Commerce Commission*, the United States Court of Appeals for the Seventh Circuit (Seventh Circuit) remanded a Commission opinion based on a lack of evidence that is not present here. Midwest ISO has presented sufficient evidence to support the use of regional cost allocation for MVPs. Further, the MVP Proposal was designed as an integrated package of processes that would fit within Midwest ISO’s Commission-approved, Order No. 890-compliant transmission planning process. Second, we reject challenges to the individual components of the MVP Proposal, such as the MVP Criteria or portfolio approach. Many of the arguments that target the individual components of the MVP Proposal are unpersuasive because they fail to consider the MVP Proposal as an integrated package of reforms. Each component of the MVP Proposal contributes to a transmission cost allocation methodology that is just and reasonable. Thus, we affirm, for example, that the MVP Criteria provide an effective means for Midwest ISO and its stakeholders to identify projects that will provide regional benefits and whose costs are appropriately allocated across the region. Similarly, we continue to find that the Exclusion Criteria place appropriate limits on which projects can and cannot qualify for MVP cost allocation.

29. We continue to find that the MVP Proposal will enable Midwest ISO and its stakeholders to achieve a number of goals at one time.<sup>61</sup> By applying the MVP Criteria, Midwest ISO and its stakeholders will be able to identify transmission projects that will provide regional benefits to the Midwest ISO transmission grid. In addition, as candidate transmission projects will be evaluated in Midwest ISO’s Order No. 890-compliant

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<sup>60</sup> MVP Order, 133 FERC ¶ 61,221 at P 193.

<sup>61</sup> MVP Order, 133 FERC ¶ 61,221 at P 194.

transmission planning process, they will be considered in a transparent process that provides for thorough examination of whether a project should receive regional cost allocation. Finally, the portfolio element of the MVP Proposal will provide Midwest ISO with sufficient flexibility to move forward with MVPs in appropriate numbers and at appropriate times in order to maximize regional benefits and serve as another check to ensure that the costs of each group of MVPs is allocated fairly.

30. To further enhance the transmission planning process we grant rehearing and require that Midwest ISO revise its Tariff to include periodic reviews of the costs and benefits associated with MVPs and to disseminate the relevant data to stakeholders. Specifically, as discussed further herein, Midwest ISO is directed to conduct periodic reviews, at least every three years, to monitor the costs and benefits of the cumulative effects of all MVPs approved in the MTEP, and to provide the results and underlying analyses to the appropriate stakeholder committees (e.g., RECB Task Force, Advisory Committee) and to publish these results and underlying analyses on the Midwest ISO website. We believe that these reviews will enhance the transmission planning process by further informing the decision-making process in developing future MVPs in a manner that ensures that benefits accrue throughout the entire Midwest ISO region.

31. We grant clarification concerning underground and underwater transmission lines. In the MVP Order, we did not intend to exclude underground or underwater transmission lines from MVP consideration entirely. We also grant clarification regarding grandfathered agreements. The MVP Order did not preclude or prejudge any future section 205 filing proposing changes to the responsibility of grandfathered agreements for regional cost-sharing.

32. In sum, the MVP Proposal represents another step forward in Midwest ISO's evolution as a Regional Transmission Organization (RTO) that provides increased efficiencies and benefits to its members that would otherwise be unattainable except through regionally coordinated operation.

## **B. Requests for Rehearing**

### **1. Consistency with Cost Causation and Illinois Commerce Commission**

33. Exelon contends that the record contains no substantial evidence that MVPs satisfy the "roughly commensurate" comparison defined in *Illinois Commerce Commission*. Exelon argues that the Commission repeatedly invoked "regional benefits" to defend the MVP Criteria, but that finding such benefits is only a first step in justifying the socialization of transmission costs. Exelon claims that the phrase "regional benefits" has little meaning in the multi-state Midwest ISO footprint and does not indicate that MVPs create roughly equal benefits in all areas. It notes that under Midwest ISO's proposal, MVPs can have "regional benefits" if they benefit, at most, two pricing zones

in the Midwest ISO region. Exelon adds that repeated use of the phrase “regional benefits” cannot save the MVP Order any more than the use of the allegedly discredited phrase “backbone transmission system” saved Order No. 494 from being reversed on appeal.<sup>62</sup>

34. Hoosier-SIPC argue that the Commission’s acceptance of the proposed cost allocation was clearly arbitrary and capricious. Hoosier-SIPC claim that while the MVP Order “pays lip service to the notion that benefits and costs must be compared for individual customers,” the Commission did not respond to their argument that absent a demonstration that the costs and benefits of MVPs had been compared for them specifically, and that such a comparison would be part of the evaluation of future proposed MVPs, the MVP cost allocation scheme could not pass muster.<sup>63</sup> They claim that while the Commission does not need to precisely calculate transmission facility costs and the associated benefits to each transmission customer, there must be substantial evidence that each customer charged will derive benefits roughly commensurate with its share of withdrawals. They add that none of the Commission’s four criteria for accepting the MVP Proposal (i.e., the MVP Criteria, portfolio approach, MTEP process, and stakeholder support) require an assessment of benefits derived by Hoosier-SIPC.

35. Hoosier-SIPC also maintain that none of Midwest ISO’s studies addressed the central question of whether the benefits derived by each individual entity outweigh the costs that will be required to pay for MVPs. Hoosier-SIPC claim that Midwest ISO has provided no such evidence and believes it would be inappropriate to analyze MVP benefits for each pricing zone.<sup>64</sup> Hoosier-SIPC are particularly concerned that Midwest ISO calculates the costs and benefits of individual projects by pricing zone, yet it refuses to share this information on costs and benefits with Hoosier-SIPC. Hoosier-SIPC therefore infer that the data demonstrate that costs and benefits are not even roughly commensurate.<sup>65</sup> Hoosier-SIPC argue that, even taking Midwest ISO’s studies at face value, they do not support the MVP cost allocation. They state that, while Midwest ISO estimates benefits in 2015 of \$582 to \$798 million, expected annual costs are \$675 million. Further, since Midwest ISO has an incentive to overstate benefits and

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<sup>62</sup> Exelon Request for Rehearing at 3-4 (citing *Illinois Commerce Commission*, 576 F.3d 470). Exelon notes that the MVP Order also referred to the term “backbone transmission system.” Exelon Request for Rehearing at n.6.

<sup>63</sup> Hoosier-SIPC Request for Rehearing at 22-23.

<sup>64</sup> Hoosier-SIPC Request for Rehearing at 6.

<sup>65</sup> Hoosier-SIPC Request for Rehearing at 15-16.

underestimate costs, Hoosier-SIPC allege, these results provide no support for Filing Parties' claim that the MVPs' benefits will outweigh their costs.<sup>66</sup>

36. Illinois Commission argues that the Seventh Circuit has clarified the cost causation principle by equating beneficiaries with cost causers to a limited extent.<sup>67</sup> It argues that the courts have stated that compliance with the cost causation principle will be evaluated by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.<sup>68</sup> It states that in this case, the reference to burdens imposed is a reference to cost causers. According to Illinois Commission, these statements by the courts show that cost causation is to be the primary consideration in proper cost allocation. It further argues that the primacy of cost causation is reasonable because, in most cases, methods for identifying cost causers are more direct, more precise, observable in present time and less prone to debate than methods for identifying beneficiaries. In short, it argues, cost causers must be taken into account, and measurable beneficiaries are recognized only to the limited extent described by the court.<sup>69</sup> Illinois Commission maintains that, rather than holding the MVP Proposal to this standard, the Commission relied on unsubstantiated claims of widespread regional benefits. The Commission also failed to require Midwest ISO to provide evidence that the distribution of benefits of MVPs will be roughly commensurate with each load serving entity's share of energy withdrawals.<sup>70</sup>

37. Illinois Commission argues that, in the MVP Order, the Commission improperly relies on unsupported, idealized generalizations regarding the "functional approach to transmission planning" concept rather than assessing actual Tariff language submitted by

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<sup>66</sup> Hoosier-SIPC Request for Rehearing at 14.

<sup>67</sup> Illinois Commission Request for Rehearing at 8 (citing *Illinois Commerce Commission*, 576 F.3d at 476 ("To the extent that a utility benefits from the costs of new facilities, it may be said to have 'caused' a part of those costs to be incurred, as without the expectation of its contributions the facilities might not have been built, or might have been delayed.")).

<sup>68</sup> Illinois Commission Request for Rehearing at 9 (citing *Illinois Commerce Commission*, 576 F.3d at 476 (citing *Midwest ISO Transmission Owners*, 373 F.3d at 1368)).

<sup>69</sup> Illinois Commission Request for Rehearing at 9.

<sup>70</sup> Illinois Commission Request for Rehearing at 14-19.

Midwest ISO as required by the FPA.<sup>71</sup> Illinois Commission argues that the proposed Tariff language grants Midwest ISO excessive discretionary authority to “single-handedly approve groups of projects, subject to no real scrutiny or challenges, and impose their associated costs onto unassuming captive customers in a virtually unregulated manner.”<sup>72</sup>

38. Illinois Commission argues that the Commission erred in finding that MVPs provide regional benefits.<sup>73</sup> It claims that the definition of “regional” in the MVP Proposal implies only that two different zones receive a benefit and not necessarily net benefits.<sup>74</sup> Illinois Commission asserts that Criteria 2 and 3 require only that the aggregation of a project’s benefits exceed its cost, not that the zones receive net benefits.<sup>75</sup> Illinois Commission adds that the portfolio approach will not ensure that benefits are spread equally through the Midwest ISO region, noting that Criterion 1 does not require projects to be measurably cost beneficial. It concludes that, as a result, the MVP cost allocation will result in unjust, unreasonable, and unduly discriminatory rates.

39. Illinois Commission argues that the Commission failed to require Midwest ISO to provide evidence regarding the distribution of MVP benefits. It maintains that, in *Illinois Commerce Commission*, the court discussed cost causation in terms of “members,” “Commonwealth Edison,” “the customer,” and “that party,” which indicates that benefits and costs should be compared on a distributed (i.e., member, utility, zonal, customer, or party) basis, not on just an aggregate basis.<sup>76</sup> Illinois Commission asserts that, by

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<sup>71</sup> Illinois Commission Request for Rehearing at 5-7 (citing MVP Order, 133 FERC ¶ 61,221 at P 193-94, 236).

<sup>72</sup> Illinois Commission Request for Rehearing at 8.

<sup>73</sup> Illinois Commission Request for Rehearing at 17 (citing MVP Order, 133 FERC ¶ 61,221 at P 3).

<sup>74</sup> Illinois Commission Request for Rehearing at 17 (citing Filing Parties July 15, 2010 Filing, Tab C, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451D).

<sup>75</sup> For an MVP that costs \$100 million, Illinois Commission explains that, if \$99 million, \$1.1 million, \$0 million, and \$0 million in benefits accrue to Zones A, B, C, and D, respectively, and if those four zones have an equal share of the market, then each zone would pay \$25 million under the proposal, even though only Zone A would receive net benefits.

<sup>76</sup> Illinois Commission Request for Rehearing at 15-16 (citing *Illinois Commerce*

examining costs and benefits in the aggregate, Midwest ISO did not satisfy this standard, and as a result, the MVP Proposal will produce inequitable and inefficient rates. Illinois Commission argues that the Commission previously recognized the importance of performing benefits analyses on a zonal basis. According to Illinois Commission, in a 2007 proceeding regarding Market Efficiency Projects, the Commission declined to require a zonal allocation, rather than a sub-regional allocation, because Midwest ISO stated that it lacked the necessary computer modeling tools.<sup>77</sup> Illinois Commission claims that Midwest ISO now has the capability to perform zonal analyses, so there is no support for not using a zonal approach here.

40. Finally, Illinois Commission alleges that the Commission ignored its concern that some MVPs (e.g., economic projects to relieve congestion) could benefit load in some zones by lowering LMPs while harming load in other zones by raising LMPs. Illinois Commission is concerned that zones facing higher LMPs would, nonetheless, be allocated a share of the MVP costs.<sup>78</sup> Illinois Commission believes that the Commission erred in not providing a cost allocation that would allocate costs in a manner that is roughly commensurate with benefits in this scenario. Illinois Commission asserts that, in some instances, transmission lines can increase consumers' costs in the aggregate and decrease generators' production costs, but the associated costs will unlikely be allocated fairly under the MVP Proposal. Illinois Commission argues that it is suspect, at best, to allow production cost savings that do not flow through to consumers to be considered MVP benefits, particularly given that cost-causing generators are exempt from cost allocation.

41. IPL holds that the MVP Order "misinterprets and misapplies the primary holding" of *Illinois Commerce Commission*. According to IPL, the Seventh Circuit requires that customers not be assigned costs without evidence that benefits will accrue to the "particular utilities" that pay, not large multi-state sub-regions.<sup>79</sup> It further argues that each cost-benefit argument presented by the Commission is directly answered and undermined by the Seventh Circuit. In particular, IPL argues that the court found that

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*Commission*, 576 F.3d at 476-77).

<sup>77</sup> Illinois Commission Request for Rehearing at 16 (citing RECB II Order, 118 FERC ¶ 61,209 at P 34).

<sup>78</sup> Illinois Commission Request for Rehearing at 19.

<sup>79</sup> IPL Request for Rehearing at 6-7 (citing *Illinois Commerce Commission*, 576 F.3d at 475-76).

claims of generalized system benefits are insufficient to justify regional cost sharing.<sup>80</sup> IPL contends that, while the Commission claims that benefits may be difficult to identify and quantify, the Seventh Circuit found no indication “that the difficulty exceeds that of measuring the benefits to particular utilities of a smaller-capacity transmission line” and that nothing, in the *Illinois Commerce Commission* proceeding, enabled even a rough estimate of reliability benefits.<sup>81</sup>

42. IPL also claims that the Commission ignored the evidence presented in IPL’s Protest and the affidavit of Mr. Kempker that under MVP cost allocation, IPL will be subject to unjust and unreasonable rate increases. It maintains that, when the Commission reviews rates, “it is the result reached not the method employed which is controlling.”<sup>82</sup> As IPL explains, the MVP Order found the theory of MVP cost allocation just and reasonable, but failed to address the impact of unjust and unreasonable rates, including the “exponential growth” of IPL’s revenue requirement.<sup>83</sup> In addition, IPL asserts that the Commission relies too heavily on the court’s “roughly commensurate” language, claiming that the court’s single use of this phrase does not obviate the court’s clear directive that cost causation principles requiring “comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party.”<sup>84</sup>

43. Similarly, IPL claims that the Commission erred in accepting broad cost socialization based on unsupported benefits to planning regions rather than load-serving entities. Specifically, IPL states that the Commission summarily rejected arguments regarding specific inputs to the study, but failed to respond to IPL’s concerns regarding the scope of the study,<sup>85</sup> and the validity of the study as support for allocation of MVP

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<sup>80</sup> IPL Request for Rehearing at 7-8 (citing MVP Order, 133 FERC ¶ 61,221 at P 196, 201; *Illinois Commerce Commission*, 576 F.3d at 476-77).

<sup>81</sup> IPL Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at P 202; *Illinois Commerce Commission*, 576 F.3d at 476-77).

<sup>82</sup> IPL Request for Rehearing at 30 (citing *Federal Power Commission v. Hope Natural Gas Co.*, 320 U.S. 591, 602 (1944) (*Hope*)).

<sup>83</sup> IPL Request for Rehearing at 30-31.

<sup>84</sup> IPL Request for Rehearing at 9-10 (citing *Illinois Commerce Commission*, 576 F.3d at 476).

<sup>85</sup> IPL Request for Rehearing at 34 (citing MVP Order, 133 FERC ¶ 61,221 at P 238).

costs to IPL and similarly-situated entities.<sup>86</sup> IPL claims that the Commission erred in accepting broad cost socialization without substantial evidence regarding the accrual of benefits. IPL argues that the “primary” support for the filing – the transmission usage study – was too broad to be useful because Midwest ISO only produced data for the Midwest ISO footprint as a whole and for the three large sub-regions. IPL asserts that each of these subdivisions is too broad to determine how benefits will actually be spread in the footprint.<sup>87</sup> IPL states that the results of that transmission usage study indicate that by 2024 the allocation is 80 percent regional and 20 percent local and is less than 80 percent regional for the sub-regions.<sup>88</sup> IPL asserts that this breakdown is dependent upon all of the Regional Generation Outlet Study, including starter projects, being in service and that such an assumption is unrealistic for any plan that far into the future. IPL concludes that the court’s decision in *Illinois Commerce Commission* refers to “the customer,” “a party,” and “a utility” and cannot be reasonably interpreted to permit broad cost socialization based only on unsupported estimates of benefits to the “planning region.”<sup>89</sup>

44. MISO Northeast Transmission Customers contend that, in approving the MVP cost allocation methodology, the Commission failed to adhere to cost causation principles. They state that the Commission erroneously presumed that beneficiaries and cost causers of transmission projects are synonymous, contrary to the limitation imposed by the Seventh Circuit as to what degree the two terms are interchangeable.<sup>90</sup> MISO Northeast Transmission Customers also assert that Filing Parties provided, and the

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<sup>86</sup> IPL Request for Rehearing at 31 (citing, e.g., *Canadian Ass’n of Petroleum Producers v. FERC*, 254 F.3d 289, 299 (D.C. Cir. 2001) (*Canadian Ass’n of Petroleum Producers*)).

<sup>87</sup> IPL Request for Rehearing at 32-34 (citing Filing Parties July 15, 2010 Filing, Curran Test. at 28).

<sup>88</sup> IPL September 10, 2010 Protest, Docket No. ER10-1791-000, Att. A, Kempker Aff. at 5 (“For example, the studies in the Central Planning Sub-region showed the factors for allocation of costs for projects classified at 345 kV and above are 52 [percent] regional and 48 [percent] local compared to 45 [percent] regional and 55 [percent] local for projects classified at 345 kV and below.”).

<sup>89</sup> IPL Request for Rehearing at 33-34 (citing *Illinois Commerce Commission*, 576 F.3d at 476).

<sup>90</sup> MISO Northeast Transmission Customers Request for Rehearing at 14-15 (citing *Illinois Commerce Commission*, 576 F.3d at 476-77).



Commission cited, no evidence that utilities in Michigan would receive benefits roughly commensurate with their expected cost allocation under the MVP Proposal. They argue that, in *Illinois Commerce Commission*, the court required an assessment of costs and benefits on a utility basis, but Midwest ISO did not perform, and the Commission did not require, analysis adequate to assess MVP impacts, even on the state level.<sup>91</sup>

45. MISO Northeast Transmission Customers argue that the Commission approved an upside-down approach that is contrary to Commission policy and good business practice. They claim that transmission should be built to support generation, but the Commission approved a new paradigm in which transmission gets built first on the assumption that generation will follow. They maintain that, as a result, there are no designated or identifiable entities to which the costs of such upgrades can be charged, forcing consumers to “shoulder billions upon billions of dollars in transmission investment that may or may not be needed.”<sup>92</sup> MISO Northeast Transmission Customers argue that, without specific generator interconnection or transmission service requests, it is uncertain how one can know that investments to build transmission in remote areas are correctly sized and routed or that they satisfy documented public policies.

46. AMP argues that the Commission erred in concluding that the benefits of the proposed MVPs will be at least “roughly commensurate” with their costs, because the Commission failed to consider the relative magnitude of costs and benefits on a disaggregated basis, as required by *Illinois Commerce Commission*.<sup>93</sup> AMP claims that the court’s use of the term “roughly” was meant to give a reasonable measure of leeway in comparing benefits and costs, but that it does not give the Commission license to forgo a comparison of benefits and costs or to rely on evidence that is speculative, conclusory, or irrelevant.<sup>94</sup> AMP states that the court also found that the Commission cannot use the presumption that new transmission lines benefit the entire network “to avoid the duty of comparing the costs *assessed against a party* to the burdens imposed or benefits drawn by

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<sup>91</sup> MISO Northeast Transmission Customers Request for Rehearing at 15-16 (citing *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>92</sup> MISO Northeast Transmission Customers Request for Rehearing at 32.

<sup>93</sup> AMP Request for Rehearing at 5 (citing *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>94</sup> AMP Request for Rehearing at 5 (citing *Florida Gas Transmission Co. v. FERC*, 604 F.3d 636, 639 (2010)).

that party.”<sup>95</sup> AMP maintains that, while the Seventh Circuit does not mandate a consideration of costs and benefits for individual customers, it does require one on a disaggregated basis, at least on a zonal level.<sup>96</sup> AMP claims that the Commission understood this requirement,<sup>97</sup> but instead relied on studies that focused only on regional benefits and conclusory statements regarding wide-ranging costs and benefits in order to accept the proposal.<sup>98</sup>

47. FirstEnergy claims that the Commission lacked the required substantial evidentiary basis for finding the MVP rate design to be consistent with cost causation principles or just and reasonable.<sup>99</sup> It states that the Commission did not discuss how the MVP Proposal will ensure that the benefits and burdens of MVPs will be appropriately balanced, as the Commission cannot merely presume that transmission upgrades benefit the entire Midwest ISO network by improving reliability.<sup>100</sup> FirstEnergy also argues that the Commission failed to rely on “plausible financial values” when comparing costs and

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<sup>95</sup> AMP Request for Rehearing at 12 (citing *Illinois Commerce Commission*, 576 F.3d at 477 (emphasis added, internal quotation omitted)).

<sup>96</sup> AMP asserts that, since the Seventh Circuit was addressing PJM’s proposal to assign costs on a pricing-zone basis, it is reasonable to construe references to “parties” as referring to pricing zones within an RTO. AMP Request for Rehearing at n.20.

<sup>97</sup> AMP Request for Rehearing at 12 (citing MVP Order, 133 FERC ¶ 61,221 at P 195 (“The cost causation principle thus requires the Commission ensure that the costs allocated to a beneficiary under a cost allocation method are at least roughly commensurate with the benefits that are expected to accrue to that entity.” (emphasis added))).

<sup>98</sup> AMP Request for Rehearing at 13 (citing MVP Order, 133 FERC ¶ 61,221 at P 227-33). AMP adds that the Commission relied on the MVP methodology to dismiss an argument that residential customers that do not live near an MVP will bear costs without receiving benefits. AMP Request for Rehearing at 13 (citing MVP Order, 133 FERC ¶ 61,221 at P 235-36).

<sup>99</sup> FirstEnergy Request for Rehearing at 26, 29 (citing, e.g., *Affiliation of Ariz. Indian Ctrs. v. U.S. Dep’t of Labor*, 709 F.2d 602, 605 (1983); *Fla. Power & Light Co. v. Lorton*, 470 U.S. 729, 743-44 (1985)).

<sup>100</sup> FirstEnergy Request for Rehearing at 26 (citing *Illinois Commerce Commission*, 576 F.3d at 477).

benefits, as required,<sup>101</sup> because it is not possible to quantify the benefits that will flow to a given load under the MVP Criteria, the portfolio approach, nor the stakeholder process.<sup>102</sup> FirstEnergy asserts that the Commission's assertions of benefits do not suffice to overcome this fatal flaw.<sup>103</sup> FirstEnergy adds that it is the burden of Filing Parties to present substantial cost causation evidence.

48. Industrial Customers reiterate arguments that the testimony, study, and data presented prove the opposite of what Midwest ISO tried to prove, i.e., that customers could incur more costs than benefits (i.e., net savings could be negative), and that there is no evidence that production cost savings, load cost savings, or reduced losses will be distributed region-wide.<sup>104</sup> Industrial Customers also assert that the underlying data, based on five usage pattern scenarios, are out of date and unreliable, i.e., Midwest ISO assumes load growth will justify massive investment in MVPs. However, assert Industrial Customers, other analysis and data compiled by Midwest ISO (for other purposes) reveals that load growth is projected to be minimal or virtually nil for the foreseeable future. Specifically, a study commissioned by Midwest ISO showed that nearly all peak load growth by 2030 was estimated to be mitigated by demand response and energy efficiency improvements, yielding little or no net load growth for the foreseeable future. Industrial Customers conclude that the MVP Proposal shifts costs from interconnecting generators to loads even though Midwest ISO's studies do not show that this shift would result in broad, regional benefits.

## 2. Portfolio Approach

49. AMP argues that the Commission's reliance on the portfolio approach did not constitute reasoned decision making and was arbitrary and capricious because the portfolio approach is irrelevant to determining whether allocated costs are roughly commensurate with anticipated benefits. AMP argues that only quantifiable benefits are meaningful in comparing costs and benefits to determine whether the "roughly

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<sup>101</sup> FirstEnergy Request for Rehearing at 6, 27 (citing *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>102</sup> FirstEnergy Request for Rehearing at 27-28.

<sup>103</sup> FirstEnergy Request for Rehearing at 27 (citing *Rio Grande Pipeline Co.*, 178 F.3d 533, 541 (D.C. Cir. 1999)).

<sup>104</sup> Industrial Customers add that the Commission should have required evidentiary hearings. Industrial Customers Request for Rehearing at 7.

commensurate” comparison has been met.<sup>105</sup> AMP argues that the Commission admits that key benefits of the portfolio approach, such as improved reliability, are not quantifiable.<sup>106</sup> AMP contends that if key benefits cannot be quantified, the fact that Midwest ISO uses a portfolio approach to select MVPs is irrelevant in considering whether the “roughly commensurate” comparison has been met.

50. Industrial Customers assert that the Commission erred in approving regional allocation of MVP costs in the absence of evidence of the regional benefits to be provided by each portfolio of projects, consistent with cost causation principles.<sup>107</sup> They claim that Filing Parties make the lack of evidentiary support manifest by proposing to package projects together so that widespread benefits would result. Industrial Customers contend that the Commission erred in accepting the portfolio approach based on broad generalizations of MVP benefits,<sup>108</sup> since it cannot quantify the benefits to customers or provide a plausible reason to believe that MVP benefits are roughly commensurate with utilities’ share of total electricity sales in the Midwest ISO region.

51. Exelon argues that the portfolio approach fails to meet the “roughly commensurate” comparison. Exelon claims that this approach was not contained in the MVP Proposal and was only developed later, in response to protests regarding the Michigan Thumb Project. According to Exelon, the Commission describes the portfolio approach expansively, as having the ability to stretch indefinitely in space and time,<sup>109</sup> such that the quantification of benefits is impossible. Exelon asserts that, as a result, if an MVP does not benefit a zone, the Commission “has a pat answer: MVPs are a general class of projects, and some years down the road one or more MVPs may be built that will

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<sup>105</sup> AMP Request for Rehearing at 9.

<sup>106</sup> AMP Request for Rehearing at 8-9 (citing MVP Order, 133 FERC ¶ 61,221 at P 221).

<sup>107</sup> Industrial Customers Request for Rehearing at 4-6 (citing *Illinois Commerce Commission*, 576 F.3d 470-71; *Southwest Power Pool, Inc.*, 131 FERC ¶ 61,252, at P 66 (2010) (June 17, 2010 Order)).

<sup>108</sup> Industrial Customers Request for Rehearing at 5-6 (citing MVP Order, 133 FERC ¶ 61,221 at P 221).

<sup>109</sup> Exelon Request for Rehearing at 5-6 (citing MVP Order, 133 FERC ¶ 61,221 at P 236).

benefit the objectors.”<sup>110</sup> Therefore, Exelon concludes that the Commission’s determination was not based on substantial evidence and was arbitrary and capricious.

52. FirstEnergy argues that, apart from identifying a group of starter projects, Midwest ISO did not indicate what the portfolio approach will involve. In particular, FirstEnergy claims that it is unclear how individual MVPs will be selected to comprise a portfolio or how parity will be ensured. It states that, absent an individualized analysis of each MVP’s costs and benefits, inefficient projects may not be screened out of the MTEP.<sup>111</sup>

53. Hoosier-SIPC express concern that the Commission did not specify what it meant by a “portfolio” approach.<sup>112</sup> They claim that the MVP Order gave no indication that a portfolio approach means that costs and benefits to each customer must be weighed to ensure that the benefits to each customer are at least roughly commensurate with the costs allocated to each customer, and therefore it falls short of ensuring compliance with the requirements set forth by the Seventh Circuit.<sup>113</sup> They state that if the Commission intends to permit projects that fail to provide multiple types of economic value across multiple pricing zones to satisfy Criterion 2 collectively, as a portfolio, Hoosier-SIPC request rehearing. They argue that this interpretation violates the Tariff, *Illinois Commerce Commission*, and other precedent.

54. Illinois Commission and OMS argue that the Commission erred in accepting the portfolio approach because it will result in transmission over-building; as such, it is unjust and unreasonable. They contend that, if each project must pass a global net benefits test in order to qualify for MVP cost allocation under the MVP Criteria, as the Commission asserts,<sup>114</sup> it is unclear why Midwest ISO would need to employ a portfolio approach to project selection. They claim that, in the alternative, “if each project is not required to pass a meaningful benefits test on its own merits, then the result of applying a portfolio approach to project selection will be to expand the portfolio.”<sup>115</sup> Under this

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<sup>110</sup> Exelon Request for Rehearing at 6.

<sup>111</sup> FirstEnergy Request for Rehearing at 28.

<sup>112</sup> Hoosier-SIPC Request for Rehearing at 5-7.

<sup>113</sup> Hoosier-SIPC Request for Rehearing at 10 & 16-17.

<sup>114</sup> See OMS Request for Rehearing at 14 (citing MVP Order, 133 FERC ¶ 61,221 at P 54, 201, 207).

<sup>115</sup> Illinois Commission Request for Rehearing at 28; OMS Request for Rehearing at 15.

alternative, Illinois Commission and OMS explain, Midwest ISO would add projects which may not be found beneficial in a stand-alone analysis, in order to bring benefits to particular zones or sub-regions and thereby balance the portfolio, which would result in over-building. Illinois Commission and OMS request that the Commission reject the portfolio approach and require Midwest ISO to apply a meaningful benefits test to each candidate MVP.

55. Illinois Commission states that, in approving the portfolio approach, the Commission failed to uphold the section 205 filing requirements of the FPA, and the related due process rights of interested stakeholders. It states that, under the filed rate doctrine, “a utility can claim no rate as a legal right other than the filed rate,”<sup>116</sup> and sellers of wholesale electric power subject to Commission jurisdiction can recover the costs incurred by their payment of just and reasonable rates based on an assumption of a “voluntary exchange” in the marketplace.<sup>117</sup> Illinois Commission claims that Midwest ISO is obligated to maximize the revenues of transmission owners under the Transmission Owners Agreement,<sup>118</sup> but bundling projects such that there is no reasonable opportunity to assess the real costs and actual benefits calls the voluntary exchange into question. Further, Illinois Commission urges adherence to the policy that utilities must make a case-by-case showing before the Commission will authorize transmission rate incentives,<sup>119</sup> and particularly for transmission rate incentives, the cost components of formula rates must be filed.<sup>120</sup> It asserts that it is unclear how formalized

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<sup>116</sup> Illinois Commission Request for Rehearing at 42 (citing, *e.g.*, 16 U.S.C. § 824d(c) (2006)).

<sup>117</sup> Illinois Commission Request for Rehearing at 42 (citing *Mississippi Power & Light v. Mississippi Ex Rel Moore, Attorney General of Mississippi, et al.*, 487 U.S. 354 (1988); *Elizabethtown Gas Co. v. FERC*, 10 F.3d 866, 870 (D.C. Cir. 1993) (citing *Texas Power Corp. v. FERC*, 908 F.2d 998, 1004 (D.C. Cir. 1990))).

<sup>118</sup> Agreement of Transmission Facilities Owners to Organize Midwest Independent Transmission System Operator, Inc., a Delaware Non-Stock Corporation, Midwest ISO, FERC Electric Tariff, Rate Schedule No. 1 (Transmission Owners Agreement).

<sup>119</sup> Illinois Commission Request for Rehearing at 43 (citing *Baltimore Gas & Electric Co.*, 122 FERC ¶ 61,034, at P 10 (2008)).

<sup>120</sup> Illinois Commission Request for Rehearing at 43 (citing, *e.g.*, *Trans-Allegheny Interstate Line Co.*, 119 FERC ¶ 61,219, at P 11, 54 (2007)).

designations of cost allocations for bundles of projects to meet loosely defined public policy objectives under the MVP Proposal would meet these objectives.

56. IMEA argues that the Commission had no reasoned basis to find that the portfolio approach will ensure that benefits and costs are broadly spread.<sup>121</sup> According to IMEA, the Commission erroneously found that an undefined, “synergistic” methodology would protect against the disparate treatment of sub-regions “on the grounds that the methodology will be applied to a system that is already determined to be fully integrated and to assess projects that, as MVPs, have been pre-determined to be beneficial to the entire Midwest ISO region.”<sup>122</sup> IMEA argues that this error can best be exposed by asking on what basis a sub-region or transmission customer can demonstrate that it will not benefit from an MVP. IMEA states that the answer is that, given how MVPs are defined, they would have no basis upon which to make such a demonstration. IMEA expects that the portfolio approach will allow projects that would not qualify as MVPs on an individual basis to instead qualify on a collective basis.

57. IPL argues that the Commission did not engage in reasoned decision making because it treated the portfolio approach as equivalent to the DFAX methodology employed in PJM.<sup>123</sup> IPL claims that the rationale behind the portfolio approach seems to be that if Midwest ISO can build enough projects at once, some modicum of benefits should accrue to all corners of the system. IPL asserts that this approach could cost IPL more because Midwest ISO has an incentive to approve enough projects to ensure that all member utilities will bear a portion of the costs. According to IPL, the portfolio approach is “based on a fiction that, if projects are considered and approved together, that will somehow change the benefits calculus, or mask that no such calculus is taking place.”<sup>124</sup> In this manner, IPL argues, the Commission erroneously treats the portfolio approach as functionally equivalent to the DFAX methodology. IPL explains that the record in the PJM proceeding showed that hundreds of millions of dollars are shifted

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<sup>121</sup> IMEA Request for Rehearing at 13 (citing MVP Order, 133 FERC ¶ 61,221 at P 13).

<sup>122</sup> IMEA Request for Rehearing at 13.

<sup>123</sup> IPL explains that the DFAX method involves a utility-by-utility calculation of benefits based on power flows and assigns costs in those proportions. IPL Request for Rehearing at 18.

<sup>124</sup> IPL Request for Rehearing at 18.

between customers if 100-percent socialization rather than a power-flow based methodology is used.<sup>125</sup>

58. IPL also argues that the Commission's determination that the portfolio approach cures the MVP cost allocation's failure to satisfy cost causation principles was arbitrary and capricious and an unjustified departure from Commission precedent. IPL contends that the Commission cannot rely on the interconnected nature of the transmission system to speculate that a hypothetical portfolio will remedy cost causation deficiencies. It maintains that the Commission and the Seventh Circuit have found that upgrades to an integrated system are insufficient to support cost assignment to a particular entity.<sup>126</sup> IPL also claims that the portfolio approach was not included in the MVP Proposal, and the filing did not include material on the issue. In addition, IPL claims that there is no discussion of how the single, previously-approved project – the Michigan Thumb Project – can be considered after the fact on a portfolio basis. It adds that the only plausible portfolio in the record is the starter projects identified by Midwest ISO, but there is no evidence that these projects will benefit IPL's pricing zone.<sup>127</sup>

59. MISO Northeast Transmission Customers contend that the portfolio approach will result in unjust and unreasonable rates by exacerbating, rather than resolving, protestors' cost causation concerns. Like Illinois Commission and OMS, MISO Northeast Transmission Customers contend that the portfolio approach will inflate costs and cause the construction of "bad" projects that do not create region-wide benefits and would not be justified on a stand-alone basis by combining them into a portfolio with "good" projects that provide benefits to all users of the Midwest ISO transmission system.<sup>128</sup> According to MISO Northeast Transmission Customers, the portfolio approach is also inconsistent with Commission orders on transmission rate incentives because the approach eliminates the ability to determine whether each project on its own has

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<sup>125</sup> IPL Request for Rehearing at 17-19.

<sup>126</sup> IPL Request for Rehearing at 26-27 (citing *Transcontinental Gas Pipe Line Corp.*, 112 FERC ¶ 61,170, at 61,924-25 (2005); *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>127</sup> IPL Request for Rehearing at 12-13.

<sup>128</sup> MISO Northeast Transmission Customers Request for Rehearing at 17-18.



demonstrated sufficient benefits to justify socialized cost allocation.<sup>129</sup> MISO Northeast Transmission Customers also argue that, by comparing aggregate benefits to aggregate customers, the portfolio analysis is inconsistent with *Illinois Commerce Commission*, which requires that the roughly commensurate comparison be satisfied on a utility basis, rather than on an aggregate basis. They add that the portfolio approach exacerbates concerns that Michigan utilities will be required to pay disproportionate MVP costs.

60. Michigan Commission argues that the Commission erred in requiring a portfolio approach to the selection of MVPs. It is concerned that the portfolio process could send the wrong market signals, be less efficient, and lead to over-building because packages of projects will be analyzed in the aggregate in order to identify some benefits in each region and justify cost socialization, rather than evaluating each project on its own merits. It also claims that grouping projects would require reshuffling projects in the queue, potentially holding “some necessary projects hostage to an otherwise un-needed pairing with other projects.”<sup>130</sup>

61. Michigan Commission requests that the Commission provide clarification regarding the portfolio process. Michigan Commission believes that it is unclear whether the MVP Order approving the portfolio approach is consistent with the filing, where projects are assembled into a portfolio only after they have been identified as potential MVPs according to the MVP Criteria and gone through the MTEP process. Michigan Commission requests clarification that the Commission is not contemplating that MVPs will be grouped at the outset for purposes of satisfying the criteria. Michigan Commission also requests that the Commission provide additional guidance on the factors that should be used in balancing the portfolio or indicate that parties will have an opportunity to evaluate and/or modify such factors in the required compliance filing.<sup>131</sup>

62. Wisconsin Commission also opposes the portfolio approach, stating that it is unworkable and will result in unjust and unreasonable rates.<sup>132</sup> It argues that the

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<sup>129</sup> MISO Northeast Transmission Customers Request for Rehearing at 18 (citing, e.g., *Promoting Transmission Investments through Pricing Reform*, Order No. 679, FERC Stats. & Regs. ¶ 31,222, *order on reh’g*, Order No. 679-A, FERC Stats. & Regs. ¶ 31,236 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007)).

<sup>130</sup> Michigan Commission Request for Rehearing at 16.

<sup>131</sup> Michigan Commission Request for Rehearing at 4.

<sup>132</sup> Wisconsin Commission Request for Rehearing at 11-12 (citing, e.g., *Borough of Ellwood City v. FERC*, 583 F.2d 642, 649 (3rd Cir. 1978), *cert. denied*, 440 U.S. 946 (1979)).

Commission's requirement that Midwest ISO include the portfolio approach in the Tariff increases the likelihood of a dysfunctional approach to MVP transmission development. According to Wisconsin Commission, regional planning will no longer be a bottom-up approach based on transmission planning with Midwest ISO, making it necessary for a state commission to use scarce resources to be actively involved to get an acceptable MVP portfolio. Further, a state commission will need to include in its deliberations whether or not to approve MVPs because of the opportunity to shift otherwise local costs to other states. Wisconsin Commission believes that this will reduce state commissions' accountability for their decisions and cause "losing" states to file complaints under section 206 of the FPA. These factors, Wisconsin Commission argues, will lead to cost shifting among state commissions as they attempt to influence project portfolios that favor their states, leading to the over-building of transmission and increased retail rates.

63. Wisconsin Commission also maintains that the portfolio approach exceeds the Commission's statutory authority and is unconstitutional, violating the Tenth Amendment, the Commerce Clause, and numerous legal precedents. It asserts that the portfolio approach violates state sovereignty by creating an incentive for states to approve as many projects into MVP portfolios as possible and effectively coercing states to approve projects within their borders.<sup>133</sup> Wisconsin Commission concludes that the portfolio approach will cause unjust and unreasonable rates and that the Commission should, at a minimum, refer the question of the portfolio process back to the stakeholder process within Midwest ISO. It states that the Commission's requirement that Midwest ISO resolve the portfolio approach within 60 days, without stakeholder input, contradicts Order No. 890 principles.

### **3. MVP Criteria**

#### **a. Criterion 1**

64. AMP argues that all three of the MVP Criteria are irrelevant to the question of whether costs and benefits are roughly commensurate on a disaggregated basis, and that the Commission erred in relying on them as a basis for its "roughly commensurate" finding.<sup>134</sup> AMP complains that simply because a project has been determined to provide benefits in the aggregate does not imply anything about how the benefits will be

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<sup>133</sup> Wisconsin Commission Request for Rehearing at 12-13, n.15 (citing, *e.g.*, FPA §§ 201(a) and 215(i)(2); *Printz v. U.S.*, 521 U.S. 898, 928 (1997) (*Printz*); *Arkansas Elect. Co-op Corp. v. Arkansas Pub. Serv. Commission*, 461 U.S. 375, 377 (1983)).

<sup>134</sup> AMP Request for Rehearing at 6 (citing MVP Order, 133 FERC ¶ 61,221 at P 201, 207-20).

distributed among zones. AMP contends that Criterion 1 contains no provisions for comparing benefits to costs, and thereby allows a project to qualify as an MVP even if its forecasted benefits are less than its forecasted costs on a region-wide basis. AMP adds that Criteria 2 and 3 say nothing about how benefits will be distributed on a disaggregated basis. AMP also claims that, since a project must meet only one of the three criteria, the Commission may not rely on any of the criteria if one of them lacks a requirement to compare costs and benefits.

65. E.ON argues that Criterion 1 should not require any consideration of economic or reliability factors, and the Commission erred in accepting Tariff provisions with such a qualifier.<sup>135</sup> E.ON states that other requirements that must be met through the MTEP process are sufficient to ensure that a project is subject to an open and transparent analysis of costs and benefits. E.ON also claims that the Commission failed to explain its reasoning for why it was persuaded that projects should satisfy economic and reliability requirements under Criterion 1. E.ON alleges that the Commission failed to address E.ON's questions regarding this issue, including how reliability and economic considerations will be weighed under Criterion 1, whether a project may qualify if it is only more reliable or more economic, how a project's overall value or alternative projects will be identified, or how such an examination will differ from the requirements of Criteria 2 and 3.<sup>136</sup> E.ON claims that its questions must be addressed to ensure an open and transparent transmission planning process, consistent with Order No. 890. E.ON requests rehearing or, in the alternative, that the Commission require Midwest ISO to address E.ON's specific questions in a compliance filing.

66. Hoosier-SIPC argue that the Commission found only that each MVP "can" benefit the region, not that they "will" do so, and it did not find that each entity allocated MVP costs will share in such benefits. They reiterate the arguments against Criterion 1 made in their protest, including that they would derive no benefits from projects designed to meet documented energy policy mandates or laws because they are not subject to any such requirements. Hoosier-SIPC also object to the lack of a benefit assessment requirement for projects qualifying under Criterion 1.<sup>137</sup>

67. Illinois Commission and OMS argue that, contrary to the Commission's assertion, the MVP Tariff language filed by Midwest ISO, particularly for Criterion 1, does not

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<sup>135</sup> E.ON Request for Rehearing at 7 (citing MVP Order, 133 FERC ¶ 61,221 at P 208, 216).

<sup>136</sup> E.ON Request for Rehearing at 8-9.

<sup>137</sup> Hoosier-SIPC Request for Rehearing at 7-8.

require that a benefits test be passed.<sup>138</sup> Furthermore, Illinois Commission argues that the Commission erroneously characterized Midwest ISO's proposal as just and reasonable because the Commission overstates the proposal's benefits. In particular, Illinois Commission objects to the Commission's claim that MVPs "deliver energy in support of documented energy policy mandates or laws that address . . . multiple reliability and/or economic issues affecting multiple transmission zones."<sup>139</sup> According to Illinois Commission, the definitions of the MVP Criteria in the accepted Tariff language do not support such a claim.

68. Illinois Commission argues that the Commission erred in accepting the Tariff language describing Criterion 1, because it is overly broad, impermissibly vague, and not necessarily regional in applicability. Illinois Commission asserts that there is no explanation of how to determine whether a project will "reliably and economically deliver energy," leaving Midwest ISO unlimited discretion on this matter. Illinois Commission also argues that Criterion 1 does not specify how to determine whether a project delivers energy in a manner that is more reliable and/or economic than it "otherwise" would be without the upgrade, since any network addition would increase reliability.<sup>140</sup> Further, Illinois Commission contends that, in contrast to Criteria 2 and 3, Criterion 1 does not require a showing that the public policy driver is regional in nature (e.g., value in multiple pricing zones) or that there be an evaluation of benefits and costs, contrary to the Commission's claim that each project's benefits would be assessed.<sup>141</sup>

69. Industrial Customers argue that Criterion 1 is too broad and too vague, rendering the Commission's reliance on the criteria to satisfy cost causation principles arbitrary and capricious. They maintain that the Commission's reliance on generalized statements regarding the need for transmission expansion to satisfy documented energy policy mandates runs afoul of Order No. 890's plain meaning.<sup>142</sup>

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<sup>138</sup> Illinois Commission Request for Rehearing at 27; OMS Request for Rehearing at 14.

<sup>139</sup> Illinois Commission Request for Rehearing at 11 (citing MVP Order, 133 FERC ¶ 61,221 at P 1).

<sup>140</sup> Illinois Commission Request for Rehearing at 13.

<sup>141</sup> Illinois Commission Request for Rehearing at 14 (citing MVP Order, 133 FERC ¶ 61,221 at P 207).

<sup>142</sup> Industrial Customers Request for Rehearing at 9.

70. IPL asserts that the Commission erred by failing to respond to IPL's protest to the definition of "Transmission Issue" as defined in the revised Tariff language and used in Criterion 3.<sup>143</sup> In its protest, IPL argued that Midwest ISO proposes to define "Transmission Issue" as a reason to improve, modify or expand the transmission system.<sup>144</sup> Among the reasons listed is compliance with transmission owner standards. According to IPL, if a transmission owner has a "standard" of over designing a facility, then, when this term is used in conjunction with the MVP Criteria, it might lead to socialization of the incremental costs of gold-plated facilities. IPL recognizes that Midwest ISO may not have intended to draft the language this way, but that, as drafted, it has the potential for such unintended consequences. IPL argues on rehearing that the definition of "Transmission Issue" is too broad and grants too much deference to transmission owners.

**b. Renewable Portfolio Standards or Documented Energy Policy Mandates or Laws**

71. Hoosier-SIPC state that, since Criterion 1 does not require an assessment of benefits, they have to pay MVP costs, even though their states have either not enacted a renewable portfolio standard (i.e., Indiana) or does not apply its standard to cooperatives (i.e., Illinois).<sup>145</sup>

72. Industrial Customers contend that the Commission should not permit Midwest ISO to allocate the costs associated with state renewable portfolio standards to load-serving entities that are not subject such standards.<sup>146</sup> They note the Commission's admission that documented energy policy mandates or laws presently exist in only 11 of 13 states in Midwest ISO,<sup>147</sup> claiming that Criterion 1 MVP costs should not be foisted on ratepayers in states where ratepayers are guaranteed not to receive benefits.

73. Industrial Customers argue that favoring one state's policies over another – and thereby imposing the associated costs on a state that has chosen not to adopt the policy – violates basic tenets of state sovereignty and federalism embodied in the FPA and

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<sup>143</sup> IPL Request for Rehearing at 35-36.

<sup>144</sup> IPL September 10, 2010 Protest, Docket No. ER10-1791-000, at 40.

<sup>145</sup> Hoosier-SIPC Request for Rehearing at 7-8.

<sup>146</sup> Industrial Customers Request for Rehearing at 9-10.

<sup>147</sup> Industrial Customers Request for Rehearing at 9-10 (citing MVP Order, 133 FERC ¶ 61,221 at P 209).

reiterated in the Energy Policy Act of 2005.<sup>148</sup> They claim that the Commission gave Midwest ISO significant authority to impose the public policy requirements of one state on another, which is an acute problem because there is little consistency among state policies.<sup>149</sup> Industrial Customers assert that there is no statutory basis to enable rate recovery in support of renewable portfolio standards or similar policies, and as such, the MVP Order exceeded the bounds of the FPA and violated federalism principles. They claim that, in the absence of further congressional action, Commission approval of transmission investments on the basis of public policy objectives not directly related to the provision of reliable and cost-effective jurisdictional service is inconsistent with the FPA and the Commission's implementing regulations.<sup>150</sup> Industrial Customers also contend that, in granting the MVP Proposal, the Commission favored renewable resources, which distorts traditional ratemaking principles and exceeds the narrow authority granted by the FPA.<sup>151</sup> Industrial Customers maintain that, to ensure that political accountability remains clear, the Supreme Court has been vigilant in prohibiting the federal government from commandeering state legislatures and state executives in the name of federal interests.<sup>152</sup> They claim that Midwest ISO is not subject to control by the ratepayers burdened by its decisions, and citizens subsidizing policies in other states will be left without political recourse because they lack the necessary voting rights.

74. Michigan Commission reiterates its previous arguments,<sup>153</sup> stating that Michigan is uniquely isolated from the rest of Midwest ISO in geographic and electrical terms and is subject to a renewable portfolio standard with an in-state siting requirement. Michigan

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<sup>148</sup> Energy Policy Act of 2005, Pub. L. No. 109-58, §§ 1261 *et seq.*, 119 Stat. 594 (2005) (Energy Policy Act of 2005).

<sup>149</sup> Industrial Customers Request for Rehearing at 13-16.

<sup>150</sup> Industrial Customers Request for Rehearing at 12-13.

<sup>151</sup> Industrial Customers Request for Rehearing at 14-15 (citing 16 U.S.C. §§ 824f, 824s). Industrial Customers add that, when Congress has expressly provided some authority, but not other authority, such exclusions were intentional and thus limit agency authority. *Id.* at 15, n.44 (citing, *e.g.*, *National Ass'n of Home Builders v. Defenders of Wildlife*, 551 U.S. 644, 678 (2007)).

<sup>152</sup> Industrial Customers Request for Rehearing at 16-17 (citing, *e.g.*, *New York v. United States*, 505 U.S. 144 (1992); *Printz*, 521 U.S. 898).

<sup>153</sup> See Michigan Commission September 10, 2010 Comments, Docket No. ER10-1791-000, at 6-10.

Commission argues that the Commission erred by failing to address the argument that Michigan is uniquely situated and does not benefit, from either a reliability or an economic perspective, from transmission lines constructed outside of Michigan. Michigan Commission contends that the Commission cannot reject Michigan Commission's position in the absence of a reasoned explanation.<sup>154</sup> It claims that it demonstrated that the MVP Criteria could result in the allocation of costs to Michigan that far exceed the benefits, if any, derived by Michigan ratepayers, contrary to *Illinois Commerce Commission*.<sup>155</sup> Michigan Commission adds that the Commission erred in concluding that Criterion 2 MVPs would provide benefits to Michigan ratepayers. To address its concerns, Michigan Commission argues that a subjective measure should be established during the planning process to determine whether certain regions or pricing zones receive minimal or no benefit from a proposed MVP, and if so, they should be allocated little or none of the project's costs. Further, it asks the Commission to establish a process for determining the extent to which Michigan will benefit from MVPs and an appropriate cost allocation commensurate with those benefits.

75. MISO Northeast Transmission Customers argue that the MVP cost allocation conflicts with state policy. They allege that the Commission did not explain how MVPs will provide equal benefits to utilities in states without a renewable portfolio standard, with standards that are lower than the average in Midwest ISO, or with standards that include in-state siting requirements. They claim that the Commission and Midwest ISO should "not have their thumbs on the scale" when a state legislature determines whether and, if so, how to promote renewable energy use.<sup>156</sup> According to MISO Northeast Transmission Customers, the Transmission NOPR<sup>157</sup> would match cost allocation methods to state renewable policy mandates and the Commission erred by failing to

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<sup>154</sup> Michigan Commission Request for Rehearing at 9 (citing, *e.g.*, *Transmission Agency of Northern Calif. v. FERC*, 2010 WL 5060995 (D.C. Cir. 2010); *Globalstar, Inc. v. FCC*, 564 F.3d 476 (D.C. Cir. 2009)).

<sup>155</sup> Michigan Commission Request for Rehearing at 10-11 (citing, *e.g.*, *Illinois Commerce Commission*, 576 F.3d at 476-77; *Sithe/Independence Power Partners, L.P. v. FERC*, 285 F.3d 1, 4-5 (D.C. Cir. 2002) (*Sithe*)).

<sup>156</sup> MISO Northeast Transmission Customers Request for Rehearing at 10.

<sup>157</sup> See *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Notice of Proposed Rulemaking, 75 FR 37884 (June 30, 2010), FERC Stats. & Regs. ¶ 32,660 (2010) (Transmission NOPR). The Commission issued the Final Rule in that rulemaking proceeding on July 21, 2011. Order No. 1000, FERC Stats. & Regs. ¶ 31,323.

require Midwest ISO to use a cost allocation methodology in MISO Northeast<sup>158</sup> that promotes the public policy requirements of Michigan.

76. MISO Northeast Transmission Customers argue that multi-state cost allocation is a congressional matter, not an administrative policy matter.<sup>159</sup> They claim that the Commission's motive in approving the MVP Proposal was to provide an incentive for siting renewable generation, resulting in a *de facto* multi-state renewable portfolio standard. They argue that the Commission achieved by proclamation a federal policy on renewable standards where none exists and, in doing so, has acted beyond its authority. MISO Northeast Transmission Customers argue that, by design, the MVP Proposal enables states to export the costs associated with their renewable portfolio standards to states without such laws. MISO Northeast Transmission Customers add that the Commission's statement that the MVP Proposal is needed to address renewable portfolio policies is not supported by record evidence, does not respect state authority (e.g., Michigan's in-state siting requirement), and will result in Michigan paying a disproportionate share of MVP costs. MISO Northeast Transmission Customers also argue that the Commission did not address their request to make MISO Northeast a separate planning and cost allocation zone, and as a result, the Commission's decision was arbitrary, capricious and not the product of reasoned decision making based on substantial evidence.

77. IPL cites the Michigan Thumb Project as an example of how the MVP Order fails to satisfy the requirements of *Illinois Commerce Commission*. IPL asserts that the Michigan Thumb Project is being planned to help Michigan renewable resources to meet Michigan load to satisfy Michigan's renewable portfolio standard. IPL argues that regional cost allocation for this project amounts to a pricing scheme where utilities must pay for facilities from which they derive no, or trivial, benefits. According to IPL, *Illinois Commerce Commission* specifically precludes the Commission from approving

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<sup>158</sup> MISO Northeast Transmission Customers define MISO Northeast as the transmission facilities of: ITC Transmission; METC; Traverse City Power and Light; Zeeland Board of Public Works; Grand Haven Board of Light and Power; and Michigan South Central Power Agency. MISO Northeast Transmission Customers Request for Rehearing at 11, n.19.

<sup>159</sup> MISO Northeast Transmission Customers Request for Rehearing at 28-31.



such a pricing scheme.<sup>160</sup> IPL claims that the Commission has committed reversible error because it failed to address these arguments.<sup>161</sup>

78. IPL argues that since the state of Indiana does not have a renewable portfolio standard, the MVP Order amounts to requiring Indiana utilities to pay for facilities from which its customers derive trivial, if any, benefits, contrary to cost causation and reasonable ratemaking principles under the FPA. IPL reiterates its argument that IPL will be forced to subsidize MVPs necessitated by or built for other customers, pointing out that transmission in IPL is already built-out for the foreseeable future and the Regional Generation Outlet Study projects described in the record are all located outside of Indiana. IPL maintains that the Commission must compare “the costs assessed against a party to the burdens imposed or benefits drawn by that party.”<sup>162</sup> IPL contends that there is no evidence of direct MVP benefits to the IPL pricing zone, contrary to the Commission’s requirement that applicants demonstrate that the proposal is just and reasonable.<sup>163</sup> IPL also objects to the Commission’s reliance on benefits such as reduced planning reserve margins, because such margins are established by state regulatory authorities.<sup>164</sup>

**c. Definition of Documented Energy Policies Mandates or Laws**

79. MISO Northeast Transmission Customers argue that the Commission erred by failing to properly apply its “rule of reason” and approving Tariff sheets that do not adequately define the public policy standard of Criterion 1. They claim that under the “rule of reason,” information that significantly affects rates and services must be included in the Tariff,<sup>165</sup> but the Tariff does not define what constitutes compliance with

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<sup>160</sup> IPL Request for Rehearing at 11-12 (citing *Illinois Commerce Commission*, 576 F.3d at 476-77).

<sup>161</sup> IPL Request for Rehearing at 35.

<sup>162</sup> IPL Request for Rehearing at 17.

<sup>163</sup> IPL Request for Rehearing at 16-17 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 132 FERC ¶ 61,184, at P 36 (2010)).

<sup>164</sup> IPL Request for Rehearing at 14-17.

<sup>165</sup> MISO Northeast Transmission Customers Request for Rehearing at 7 (citing Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 1633; *City of Cleveland v. FERC*, 773 F.2d 1368, 1376 (D.C. Cir. 1985) (*City of Cleveland*)).

documented energy policy mandates, laws, or regulatory requirements under Criterion 1. They maintain that this overly broad definition will result in the socialization of costs for projects that provide primarily local benefits. In addition, MISO Northeast Transmission Customers argue that the Unique Purpose Projects proposal presented in stakeholder discussions defined these projects more narrowly and received broad stakeholder support.<sup>166</sup>

80. Exelon claims that the Commission did not engage in reasoned decision making based on substantial evidence and merely “washes its hands” of Exelon’s arguments regarding Criterion 1.<sup>167</sup> Exelon contends that transmission plans should implement public energy policies as they were enacted (e.g., by accounting for rate caps in state laws), not based on speculation about future laws or environmental aspirations (e.g., a national renewable portfolio standard).<sup>168</sup> Exelon claims that it does not matter that state commissions participate in the stakeholder process, noting that the final decision is left to the Midwest ISO Board of Directors rather than stakeholders. In addition, Exelon claims that the criterion for determining whether a project will implement public policy while minimizing delivered costs must be transparent.

81. Illinois Commission asserts that the Commission failed to address whether Midwest ISO intends to plan and design MVPs to meet the renewable portfolio standards of load-serving entities outside of Midwest ISO. Illinois Commission argues that not having MVPs serve this function is the only reasonable and legally supportable answer.<sup>169</sup> Illinois Commission explains, however, that the accepted Tariff language for Criterion 1 is not limited to the mandates and laws of Midwest ISO states nor to Midwest ISO states’ compliance with federal mandates or laws, and the testimony of Mr. Ramey and Ms. Curran are unclear on this point. Therefore, Illinois Commission is concerned that customers within the Midwest ISO region could pay for major transmission projects built to serve loads across the country. It claims that the Commission’s reliance on the

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<sup>166</sup> MISO Northeast Transmission Customers Request for Rehearing at 9-10.

<sup>167</sup> Exelon Request for Rehearing at 10 (citing MVP Order, 133 FERC ¶ 61,221 at P 10).

<sup>168</sup> Exelon Request for Rehearing at 10-11.

<sup>169</sup> Illinois Commission Request for Rehearing at 39 (citing 16 U.S.C § 824; *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at P 486 (1999), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001)).

integrated nature of the transmission system to justify cost socialization “becomes even less plausible when the scope of the planning goes beyond the Midwest ISO footprint.”<sup>170</sup> Illinois Commission requests that the Commission require Midwest ISO to address this issue and, if needed, to explain the corresponding legal authority justifying Midwest ISO’s actions.

82. IMEA argues that the MVP Criteria are vague, overly broad, and unsupported. IMEA contends that Criterion 1 does not define “documented energy policy mandates or laws,” which could allow projects that may indirectly further public policy or meet future, undefined policy mandates to qualify.<sup>171</sup> IMEA states that this definition is crucial because Criterion 1 does not require a demonstration of system-wide benefits. IMEA also asserts that there are no criteria to determine whether a project will provide “more reliable and/or more economic” generation than “without the transmission upgrade” under Criterion 1, so that any project may qualify. IMEA claims that the Commission summarily rejected this criticism,<sup>172</sup> which demonstrates a lack of reasoned decision making, and incorrectly claimed that those arguing that the criteria are overly broad, rather than Filing Parties, bear the burden of proof.<sup>173</sup> According to IMEA, the Commission delegated to stakeholders and majority rule the task of determining what is properly within the ambit of the Tariff language,<sup>174</sup> which could permit the subversion of public policy requirements. IMEA states that the Commission cannot rely on the stakeholder process or general support of state authorities or participants to determine what is just and reasonable.<sup>175</sup>

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<sup>170</sup> Illinois Commission Request for Rehearing at 41.

<sup>171</sup> IMEA Request for Rehearing at 6-7 (citing Filing Parties July 15, 2010 Filing, Curran Test. at 34).

<sup>172</sup> IMEA Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at P 209).

<sup>173</sup> IMEA Request for Rehearing at 8-9 (citing MVP Order, 133 FERC ¶ 61,221 at P 210).

<sup>174</sup> IMEA Request for Rehearing at 9-10 (citing MVP Order, 133 FERC ¶ 61,221 at P 212).

<sup>175</sup> IMEA Request for Rehearing at 11 (citing *Illinois Commerce Commission*, 576 F.3d 470; *U.S. Telecomm. Ass’n. v. FCC*, 359 F.3d 554, 565-66 (D.C. Cir. 2004) (*U.S. Telecom*)).

83. Midwest TDUs claim that in the MVP Order, the Commission failed to address their request for clarification that Criterion 1 should be interpreted to encompass FPA section 217(b)(4)'s<sup>176</sup> directive for planning to meet the reasonable needs of load-serving entities and to enable them to secure long-term rights for their existing and planned long-term power supply arrangements.<sup>177</sup> Midwest TDUs provide examples to support their contention that under the current long-term transmission rights system, it is effectively impossible for new baseload generation resources to obtain adequate new long-term rights. They claim that these problems will grow with the increasing reliance on low-carbon resources, which will not be located near load.

84. Midwest TDUs assert that the requirements of section 217(b)(4) expressly apply to the Commission and cannot be delegated,<sup>178</sup> but the Commission's silence on this issue leaves it to Midwest ISO and its stakeholders to determine which laws or regulatory requirements are encompassed by Criterion 1. Midwest TDUs contend that transmission planning aimed at meeting the projected needs of load-serving entities will incorporate load-serving entities' public policy requirements and is the method most likely to yield the "right-sized" grid. As load-serving entities are essential to resource location decisions, Midwest TDUs state that their needs should guide transmission planning for public policy requirements. Midwest TDUs conclude that consideration of section 217(b)(4) as part of the MVP planning process is essential to "making the results of the MVP planning process reality-based and cost-effective."<sup>179</sup> Midwest TDUs request clarification that Criterion 1 should be interpreted to encompass FPA section 217(b)(4)'s planning directives and, if needed, require Midwest ISO to modify its Tariff accordingly.

**d. Criteria 2 and 3**

85. AMP argues that the MVP Criteria are irrelevant and the Commission erred in relying on them as a basis for its "roughly commensurate" finding.<sup>180</sup> AMP contends that

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<sup>176</sup> 16 U.S.C. § 824q(b)(4) (2006).

<sup>177</sup> Midwest TDUs Request for Rehearing at 17 (citing MVP Order, 133 FERC ¶ 61,221 at P 395).

<sup>178</sup> Midwest TDUs Request for Rehearing at 19-20 (citing *City of Idaho Falls v. FERC*, No. 09-1120, slip op. at 14 (D.C. Cir. 2011)).

<sup>179</sup> Midwest TDUs Request for Rehearing at 20.

<sup>180</sup> AMP Request for Rehearing at 6 (citing MVP Order, 133 FERC ¶ 61,221 at P 201, 207-20).

Criteria 2 and 3 consider costs and benefits only on an aggregate, Midwest ISO region-wide basis, which does not imply anything about the distribution of benefits among pricing zones or that all zones will necessarily benefit. In particular, AMP also maintains that Criteria 2 and 3 do not ensure that benefits and costs will be appropriately distributed on a disaggregated basis (e.g., for each pricing zone) because the criteria only require that a project provide net benefits on a region-wide basis.

86. Industrial Customers argue that the Commission erred in approving Criteria 2 and 3.<sup>181</sup> They claim that Criterion 2 does not prevent projects with only localized benefits from qualifying for regional cost sharing and, in so doing, does not ensure that the costs of the projects match the benefits to the particular parties paying for them. Similarly, they maintain that Criterion 3 deviates from established Commission precedent, statutory requirements, and court orders requiring that there be “some linkage between the costs of *specific* projects and the benefits to those who pay for them.”<sup>182</sup>

87. Illinois Commission argues that the Commission mischaracterizes the nature of Criteria 2 and 3 by stating that MVPs will address “multiple reliability and/or economic issues affecting multiple transmission zones.”<sup>183</sup> It claims that Criterion 2 does not require a project to solve a reliability violation in order to qualify for MVP cost allocation, and Criterion 3 only requires that a project solve one reliability violation and provide one economic benefit to multiple zones.

88. MISO Northeast Transmission Customers contend that the Commission erred by finding that there is insufficient evidence to conclude that Criteria 2 and 3 MVPs will subsume the existing Market Efficiency Project and Baseline Reliability Project cost allocation methodologies, respectively.<sup>184</sup> They claim that because Criteria 2 and 3 are included in Attachment FF, they will encompass projects justified for economic reasons, the costs of which are currently recovered primarily from local beneficiaries through the RECB I and RECB II methodologies for Baseline Reliability and Market Efficiency

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<sup>181</sup> Industrial Customers Request for Rehearing at 10 (citing MVP Order, 133 FERC ¶ 61,221 at P 213).

<sup>182</sup> Industrial Customers Request for Rehearing at 11.

<sup>183</sup> Illinois Commission Request for Rehearing at 12 (citing MVP Order, 133 FERC ¶ 61,221 at P 1).

<sup>184</sup> MISO Northeast Transmission Customers Request for Rehearing at 9 (citing MVP Order, 133 FERC ¶ 61,221 at P 262-63).

Projects.<sup>185</sup> MISO Northeast Transmission Customers claim that the RECB process was already developing a cost allocation methodology for projects similar to MVPs, and the existing RECB I and RECB II methodologies should be maintained.

89. IPL argues that the Commission failed to address IPL's argument that Midwest ISO's inclusion of the Market Efficiency Project category is premature, which violates the Administrative Procedure Act.<sup>186</sup> Specifically, IPL claims that the metrics for Market Efficiency Projects have not been adequately developed and vetted through the stakeholder process.<sup>187</sup>

90. IMEA argues that the Commission has no support for its finding that Criterion 2 is just and reasonable.<sup>188</sup> IMEA states that Filing Parties did not explain why they chose a 1:1 benefit-to-cost ratio, and a 1:1 ratio does not ensure that an MVP will provide a net benefit to ratepayers. As to the Commission's finding that MVPs are projects that provide regional benefits, IMEA argues that the Commission's finding rests on faulty logic. IMEA describes this logic as: "an MVP by definition provides regional benefits because, by definition the MVP will further public energy policies which will be defined by the Filing Parties under the [T]ariff as what they and stakeholders determine benefit the region."<sup>189</sup> IMEA also argues that the Commission failed to engage in reasoned decision-making by assuming that the 1:1 ratio will prevail through the 20-year period. IMEA contends that, as SPP's recent experience with cost overruns demonstrates, this assumption "ignores the realities of transmission construction."<sup>190</sup> Although the benefits associated with a project may extend past the 20-year assessment period, IMEA argues that this does not meet the problem, and that the Commission's failure to address these

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<sup>185</sup> MISO Northeast Transmission Customers Request for Rehearing at 8 (citing MISO Northeast Transmission Customers September 10, 2010 Protest and Request for Hearing, Docket No. ER10-1791-000, Dotterweich Aff. at 18-19).

<sup>186</sup> IPL Request for Rehearing at 47 (citing, *e.g.*, *Canadian Ass'n of Petroleum Producers*, 254 F.3d at 299).

<sup>187</sup> IPL Request for Rehearing at 36.

<sup>188</sup> IMEA Request for Rehearing at 11 (citing MVP Order, 133 FERC ¶ 61,221 at P 214).

<sup>189</sup> IMEA Request for Rehearing at 12.

<sup>190</sup> IMEA Request for Rehearing at 12.

concerns in approving this aspect of the Tariff is not reasoned decision-making.<sup>191</sup> IMEA adds that the fact that benefits may well extend beyond the 20-year assessment period does not address this fundamental problem. Further, IMEA claims that there is no definition of what will constitute costs and benefits in developing the ratio, and “there is no provision for continuing to compare costs and benefits as a project is designed or implemented.”<sup>192</sup>

91. Hoosier-SIPC argue that the Commission’s acceptance of Criterion 2 failed to properly apply the court’s findings in *Illinois Commerce Commission*.<sup>193</sup> In particular, Hoosier-SIPC claim that the Seventh Circuit did not instruct the Commission to allocate costs to all customers in a region whenever benefits would accrue throughout the region. Hoosier-SIPC state that the court rejected this argument with regard to claims that certain network upgrades would improve the reliability of the network.<sup>194</sup> Moreover, even if distant MVPs could provide them with some benefits, Hoosier-SIPC assert that there is no guarantee that those benefits would be roughly commensurate with the costs allocated to Hoosier-SIPC because Criterion 2 does not require a demonstration of benefits to particular customers before allocating MVP costs. In addition, Hoosier-SIPC claim that they would be required to pay for MVPs that provide benefits to other pricing zones because Criterion 2’s definition of “regional” only requires a demonstration of benefits in at least two pricing zones.

92. Hoosier-SIPC maintain that the Commission’s rationale for approving Criterion 3 was flawed.<sup>195</sup> They contend that Criterion 3 does not ensure that MVPs will produce broad regional benefits and that any such finding of broad regional benefits would be insufficient to justify allocating costs to entities that derive insufficient benefits. Hoosier-SIPC argue that Criterion 3 does not require a finding that they will benefit from all

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<sup>191</sup> IMEA Request for Rehearing at 12 (citing Missouri Public Service Commission, *In the Matter of an Investigation into Southwest Power Pool Cost Allocations and Cost Overruns*, File No. EO-2011-0134, at 1-2 (Nov. 23, 2010)).

<sup>192</sup> IMEA Request for Rehearing at 12-13.

<sup>193</sup> Hoosier-SIPC Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at P 213).

<sup>194</sup> Hoosier-SIPC Request for Rehearing at 8 (citing *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>195</sup> Hoosier-SIPC Request for Rehearing at 9 (citing MVP Order, 133 FERC ¶ 61,221 at P 215).

MVPs that qualify pursuant to Criterion 3, let alone that they will derive benefits at least roughly commensurate with their assigned costs. They add that Criterion 3 can be satisfied by a project that produces benefits in only two pricing zones, and while Criterion 3 requires a project to address one reliability issue and one economic based transmission issue, the reliability issue can affect only one pricing zone.

**e. Exclusion Criteria**

93. MISO Northeast Transmission Customers argue that the Commission erred by accepting a 100 kV voltage threshold for MVPs because it has been shown that these projects do not provide regional benefits.<sup>196</sup> They claim that the MVP Criteria are too broad and vague to ensure that MVPs provide regional benefits, and their studies indicate that the majority of benefits of projects rated at 345 kV and below only accrue in the local or adjacent pricing zones.<sup>197</sup> They assert that the Commission did not engage in reasoned decision-making based on substantial record evidence because it failed to address the arguments and evidence submitted by MISO Northeast Transmission Customers regarding the 100 kV voltage threshold.

94. Michigan Commission maintains that the Commission failed to adequately address its argument that MVPs should be limited to facilities at or above 300 kV. Michigan Commission reiterates its previous arguments, arguing that lower-voltage facilities do not satisfy cost causation principles because they are too local in nature to provide regional benefits commensurate with their costs and that 300 kV is at the low end of minimum threshold levels adopted in neighboring RTOs.<sup>198</sup> Michigan Commission requests that the Commission grant rehearing and require Midwest ISO to amend its minimum kV threshold consistent with neighboring RTOs. It adds that this change would increase the likelihood that MVPs would impact more than just two pricing zones.

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<sup>196</sup> MISO Northeast Transmission Customers Request for Rehearing at 12 (citing MVP Order, 133 FERC ¶ 61,221 at P 219).

<sup>197</sup> MISO Northeast Transmission Customers Request for Rehearing at 12 (citing MISO Northeast Transmission Customers September 10, 2010 Protest and Request for Hearing, Docket No. ER10-1791-000, Dotterweich Aff. at 23).

<sup>198</sup> Michigan Commission Request for Rehearing at 13-14 (citing June 17, 2010 Order, 131 FERC ¶ 61,252 at P 62, 73-75; *PJM Interconnection, L.L.C.*, Opinion No. 494, 119 FERC ¶ 61,063, at P 76, 78-79 (2007), *order on reh'g*, Opinion No. 494-A, 122 FERC ¶ 61,082, at P 63-65 (2008)).



95. Hoosier-SIPC claim that, in accepting the 100kV voltage threshold for MVPs, the Commission has failed to provide a reasoned explanation for changing its existing policy. They discuss Commission determinations in previous proceedings, including that the Commission stated that “it does not presume that every customer within its large service territory will benefit equally from all transmission expansion and, therefore, instead it requires a beneficiary analysis to determine the relative project benefits to customers,”<sup>199</sup> and it recognized that “facilities rated below 345 kV would not see the same system-wide effects as higher voltage facilities.”<sup>200</sup> Hoosier-SIPC allege that the Commission now presumes that every customer within Midwest ISO benefits significantly from all transmission expansion, even from facilities rated no higher than 100 kV. They add, in light of the Seventh Circuit’s rejection of postage stamp pricing for facilities at 500 kV and above in PJM, this finding also cannot be reconciled with the Commission’s previous acknowledgment that postage stamp pricing is less appropriate in Midwest ISO than in PJM due to Midwest ISO’s lack of history with tight power pools and regional cost sharing.<sup>201</sup>

96. Midwest ISO Transmission Owners request clarification of the Commission’s statement in its summary of the MVP Proposal that projects are ineligible for MVP cost allocation if they include “an underground or underwater transmission line with costs above and beyond the cost of an alternative overhead transmission line providing comparable benefits.”<sup>202</sup> They argue that the Commission mischaracterized the proposal because only the costs of an underground or underwater transmission line that exceed the costs of a feasible overhead line with comparable benefits will be excluded from MVP cost allocation under the proposal.<sup>203</sup> If the Commission instead intended to exclude underground and underwater transmission lines from MVP consideration entirely or does not grant clarification, Midwest ISO Transmission Owners request rehearing because the

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<sup>199</sup> Hoosier-SIPC Request for Rehearing at 16-17 (citing, *e.g.*, RECB II Order, 118 FERC ¶ 61,209 at P 6, 48).

<sup>200</sup> Hoosier-SIPC Request for Rehearing at 17 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,106, at P 44 (2006) (February 3, 2006 Order)).

<sup>201</sup> Hoosier-SIPC Request for Rehearing at 17 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,081, at P 102 (2008) (January 31, 2008 Order)).

<sup>202</sup> Midwest ISO Transmission Owners Request for Rehearing at 17 (citing MVP Order, 133 FERC ¶ 61,221 at P 30).

<sup>203</sup> Midwest ISO Transmission Owners Request for Rehearing at 18 (citing Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. FF, § II.C).

MVP Order did not discuss this issue and the record does not justify why such facilities should be excluded.<sup>204</sup>

97. Wisconsin Commission argues that the \$20 million criterion results in unjust and unreasonable rates, claiming that it fails to provide a meaningful threshold for identifying projects subject to MVP cost sharing and provides an incentive for overbuilding. Wisconsin Commission claims that the \$20 million threshold creates incentives to include numerous small projects into a larger MVP in order to shift costs away from the locale that would normally benefit under RECB, fostering an unjustified regional sharing of costs that is contrary to Commission precedent.<sup>205</sup> Wisconsin Commission argues that, without a much higher cost threshold for a project to qualify as an MVP, the broad classification criteria proposed for MVPs effectively undermine the existing Baseline Reliability Project and Market Efficiency Project methodologies, causing a lack of transparency in project classification that is contrary to Order No. 890. Wisconsin Commission reminds the Commission that it proposed a \$100 million MVP cost threshold in order to ensure delineation between MVPs of major, inter-regional impact and those that are more local in nature.

98. Wisconsin Commission also argues that the Commission's acceptance of the \$20 million criterion was not supported by substantial evidence.<sup>206</sup> It challenges the Commission's reliance on data provided by Midwest ISO that only 34 percent of the Baseline Reliability Projects approved in MTEP06 to MTEP09 exceeded \$20 million. Wisconsin Commission argues that the MTEP evidence only reflects the decisions to proceed with a project in those years when only 20 percent of a project's cost could potentially be allocated regionally. Wisconsin Commission avers that how entities acted in the past is not indicative of how they will act with a new, more generous cost allocation methodology in place. It adds that the Commission should initiate a process to remedy the insufficient evidence on this point.<sup>207</sup>

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<sup>204</sup> Midwest ISO Transmission Owners Request for Rehearing at 19-20 (citing, e.g., *E. Tex. Elec. Coop, Inc. v. FERC*, 218 F.3d 750, 755 (D.C. Cir. 2000)).

<sup>205</sup> Wisconsin Commission Request for Rehearing at 8-9 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,194, at P 10 (2005); *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>206</sup> Wisconsin Commission Request for Rehearing at 9 (citing MVP Order, 133 FERC ¶ 61,221 at P 260-64).

<sup>207</sup> Wisconsin Commission Request for Rehearing at 9-10.

#### 4. Reliance on MTEP Stakeholder Process, Commission Procedures and Stakeholder and State Support

99. Hoosier-SIPC disagree with the Commission's reliance on the MTEP stakeholder process, stakeholder support, the dispute resolution process, or the complaint process under section 206 of the FPA to justify the allocation of MVP costs to entities that receive few or no benefits.<sup>208</sup> Hoosier-SIPC argue that the Tariff does not require a comparison of the costs allocated to and benefits derived by a particular entity to ensure that they are roughly commensurate, and the MTEP stakeholder process cannot add such a requirement. They assert that the purpose of the MTEP stakeholder process is to determine whether projects comply with the Tariff, not to remedy Tariff provisions that violate the FPA. Hoosier-SIPC also argue that the availability of the dispute resolution and section 206 complaint processes cannot validate the MVP pricing scheme. They claim that PJM also has a dispute resolution process and is subject to section 206, but in *Illinois Commerce Commission* the Seventh Circuit nonetheless did not uphold the Commission's order, finding that PJM's tariff provisions did not comport with the FPA.<sup>209</sup>

100. Hoosier-SIPC argue that the support of a certain percentage, even a majority, of state authorities and Midwest ISO stakeholders cannot authorize the Commission to approve tariff provisions that violate fundamental cost causation principles. They state that it is not surprising that entities subject to renewable portfolio standards support forcing others not subject to such requirements to subsidize compliance costs.<sup>210</sup> They claim that the large number of protests filed in this proceeding make it clear that support for the MVP Proposal is far from unanimous, as does OMS' statements regarding reservations expressed by state commissions. They assert that, in *Illinois Commerce Commission*, the Seventh Circuit did not consider the support of state authorities or PJM participants.

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<sup>208</sup> Hoosier-SIPC Request for Rehearing at 12-13 (citing MVP Order, 133 FERC ¶ 61,221 at P 203-04).

<sup>209</sup> Hoosier-SIPC Request for Rehearing at 13 (citing *Illinois Commerce Commission*, 576 F.3d at 476).

<sup>210</sup> IPL also argues that, in contrast to the Commission's reliance on the stakeholder process, the court in *Illinois Commerce Commission* stated that "the fact that one group of utilities desires to be subsidized by another is no reason in itself for giving them their way." IPL Request for Rehearing at 9 (citing MVP Order, 133 FERC ¶ 61,221 at P 203-04; *Illinois Commerce Commission*, 576 F.3d at 475).

101. AMP and Illinois Commission state that the number of protests and comments against the proposal shows there is not general support by state authorities and participants across the Midwest ISO region. AMP argues that general support is irrelevant to whether the MVP Proposal allocates costs in a manner that corresponds to the benefits received by customers. AMP claims that widespread regional support is, at most, a makeweight and does not constitute the substantial evidence required by *Illinois Commerce Commission*.<sup>211</sup> In addition, AMP disagrees with the Commission's assertion that the MTEP stakeholder process is relevant to determining that the MVP Proposal will result in the allocation of MVP costs "on a basis that is 'roughly commensurate' with the benefits of those projects."<sup>212</sup> AMP argues that this reasoning reveals an unrealistic view of the RTO stakeholder process, where adversely affected minorities routinely suffer the consequences of being outvoted. It states that, given that transmission cost allocation is essentially a zero-sum game, adjusting a portfolio's composition to provide more benefits to one set of parties is almost certain to result in additional costs being borne by another set of parties. AMP asserts that this dynamic is one that fosters the creation of alliances or blocs of sufficient size to impose the result they desire. It adds that the availability of alternative dispute resolution or filing a section 206 complaint with the Commission provides no comfort in the absence of an express Tariff requirement that benefits and costs be "roughly commensurate" on a disaggregated basis.<sup>213</sup>

102. Illinois Commission argues that the state commissions in the Midwest ISO region are split regarding the proposal and disputes the Commission's observation that only the Kentucky Commission does not support OMS' comments.<sup>214</sup> Illinois Commission contends that the Commission's conclusion that the MVP Proposal was approved by the Midwest ISO Advisory Committee is untrue because the proposal filed with the Commission was never voted on by any stakeholder committee and has "dramatic differences" from the three conceptual proposals that were voted on.<sup>215</sup> It adds that only one of the three conceptual proposals that were voted on received a majority of support. Illinois Commission also argues that, in *Illinois Commerce Commission*, the Seventh

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<sup>211</sup> AMP Request for Rehearing at 11.

<sup>212</sup> AMP Request for Rehearing at 9-10 (citing MVP Order, 133 FERC ¶ 61,221 at P 200, 203).

<sup>213</sup> AMP Request for Rehearing at 10.

<sup>214</sup> Illinois Commission states that OMS' comments contained numerous footnotes to qualify the level of individual state commission support.

<sup>215</sup> Illinois Commission Request for Rehearing at 24-25.

Circuit emphasized that “the fact that one group of utilities desires to be subsidized by another is no reason in itself for giving them their way.”<sup>216</sup> Illinois Commission asserts that the Commission should not misconstrue that a consensus exists where there is none, particularly where it results in a disparity of benefits to some at the expense of others.

103. Illinois Commission argues that the Commission erred in relying on the Midwest ISO stakeholder and MTEP processes to remedy parties’ concerns rather than upholding their statutory rights under the FPA to be heard.<sup>217</sup> Illinois Commission contends that the Commission arbitrarily and capriciously failed to meaningfully address parties’ concerns regarding the degree of discretion given to Midwest ISO under the proposal or their suggested remedies (e.g., increased state oversight). Illinois Commission maintains that the Midwest ISO stakeholder process and MTEP process will not remedy its concerns, stating that the stakeholder process is “resource intensive, controlled by the Midwest ISO, and merely advisory in nature.”<sup>218</sup> Illinois Commission adds that the complaint process or alternative dispute resolution processes do not substitute for proper regulation up front or supplant the filing requirements of section 205 of the FPA.<sup>219</sup>

104. Illinois Commission argues that the Commission improperly delegated its regulatory authority to an RTO consisting of members with an obligation to maximize their own revenues in direct conflict with the FPA’s requirement to ensure just and reasonable rates. Illinois Commission asserts that delegating the assessment of RTO expansion planning processes to stakeholder planning processes is impractical, imposes undue burdens, and results in excessive costs because it forces impacted entities to track and participate in multiple levels of inter-regional and regional planning processes. Illinois Commission urges the Commission to reconsider its deference to Midwest ISO and instead uphold its obligation to provide for accountability, due process, and an opportunity to be heard in a proper legal forum. Illinois Commission adds that, contrary to the Commission’s statement that it did not expect RTOs to “necessarily invest in new,

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<sup>216</sup> Illinois Commission Request for Rehearing at 25 (citing *Illinois Commerce Commission*, 576 F.3d at 475).

<sup>217</sup> Illinois Commission Request for Rehearing at 36 (citing MVP Order, 133 FERC ¶ 61,221 at P 203, 226).

<sup>218</sup> Illinois Commission Request for Rehearing at 36-37.

<sup>219</sup> Illinois Commission Request for Rehearing at 44.

high-cost RTO infrastructure” in Order No. 2000,<sup>220</sup> the Commission has approved a massive build out without an analysis of whether the MVP Proposal is prudent.

105. Furthermore, AMP and Industrial Customers argue that the Commission may not rely on the MTEP stakeholder process as a substitute for its own evaluation under section 205 of the FPA as to whether a given cost allocation result is just, reasonable and not unduly discriminatory. AMP argues that the Commission is statutorily obligated to engage in the analysis that supports such a finding and is not at liberty to delegate that task to a voting majority of RTO stakeholders.<sup>221</sup> Therefore, AMP states that whether MVP portfolios are vetted through the MTEP stakeholder process is irrelevant to such a determination. Industrial Customers assert that, in the MVP Order, the Commission erred by abdicating this responsibility to Midwest ISO stakeholders, state regulatory authorities, and other interested persons that may or may not ensure that the beneficiary pays model is followed and the FPA is enforced.<sup>222</sup>

106. OMS<sup>223</sup> argues that, contrary to the Commission’s assertion,<sup>224</sup> the state commissions in the Midwest ISO region are not in full consensus regarding the MVP Proposal. OMS explains that, while the OMS’ comments were “generally supported” by nine of the fourteen OMS members, the Commission’s statement that only the Kentucky Commission did not explicitly support OMS’ comments is inaccurate.<sup>225</sup> OMS states that its comments also contained numerous footnotes to clarify individual state commission positions. For example, OMS notes that it explained that Missouri Commission supports

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<sup>220</sup> Illinois Commission Request for Rehearing at 45 (citing Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at P 617).

<sup>221</sup> AMP Request for Rehearing at 10-11 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 114 FERC ¶ 61,117, at P 25 (2006); *Gerber v. Norton*, 294 F.3d 173, 185-86 (D.C. Cir. 2002); *Illinois Commerce Commission v. Interstate Commerce Commission*, 848 F.2d 1246, 1258 (D.C. Cir. 1988)).

<sup>222</sup> Industrial Customers Request for Rehearing at 11-12.

<sup>223</sup> Kentucky Commission abstains from OMS’ request for rehearing of this issue.

<sup>224</sup> OMS Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at P 204).

<sup>225</sup> OMS states that its comments were not supported by Illinois Commission, Kentucky Commission, Manitoba Board, Ohio Commission, and the Pennsylvania Commission. OMS Request for Rehearing at 8.

the CARP proposal compromise position regarding allocating a portion of MVP costs directly to generators.<sup>226</sup> Similarly, OMS explains that the OMS majority unequivocally stated that “the cost causers of MVPs are remote generators” and charging load for 100 percent of MVP costs should be rejected.<sup>227</sup> OMS clarifies that although there was not a consensus of all OMS states, nine of the OMS states did support Midwest ISO’s MVP Proposal as it was filed.

107. Michigan Commission argues that the Commission erred in finding that the MVP Proposal is generally supported by state authorities and participants across the Midwest ISO region. It states that parties’ general support for the MVP Proposal was conditional, and Michigan Commission had emphasized that MVP costs must be allocated at least roughly commensurate with expected benefits. Michigan Commission adds that its support for the MVP Proposal was further qualified by seven proposed modifications.<sup>228</sup>

108. IPL argues that the Commission erred by relying on an apparent regional consensus while ordering significant changes to the MVP Proposal.<sup>229</sup> IPL contends that there was no true regional consensus for the MVP Proposal and any stakeholder support was premised on the package presented to the Commission. IPL maintains that, by altering the proposal, the Commission cannot reasonably place such weighty significance on regional consensus. In particular, IPL argues that all of Midwest ISO’s data regarding the costs and benefits of the proposal were premised on allocating MVP costs to PJM load. IPL asserts that the Commission significantly altered the proposal by removing any cost allocation to PJM load, and all of Midwest ISO’s evidence was premised on allocating charges to PJM.<sup>230</sup> As a result, IPL concludes that the Commission effectively negated all of the evidence in the record.

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<sup>226</sup> OMS Request for Rehearing at 9 (citing OMS September 10, 2010 Comments, Docket No. ER10-1791-000, at n.7).

<sup>227</sup> OMS Request for Rehearing at 9 (citing OMS September 10, 2010 Comments, Docket No. ER10-1731-000, at 7).

<sup>228</sup> Michigan Commission Request for Rehearing at 8 (citing Michigan Commission September 10, 2010 Comments, Docket No. ER10-1731-000, at P 10).

<sup>229</sup> IPL Request for Rehearing at 23.

<sup>230</sup> IPL Request for Rehearing at 24 (citing MVP Order, 133 FERC ¶ 61,221 at P 199, 224-26).

## 5. Issues Related to MTEP Process

109. IPL requests rehearing of the Commission's decision to reject IPL's requests to require Midwest ISO to: (1) insert Tariff provisions regarding unintended consequences so that Midwest ISO must look back every three years to ensure that the cost allocation is being implemented efficiently based on stakeholder input; and (2) require a budgeting mechanism so that stakeholders are aware of how much they may be required to pay for upgrades.<sup>231</sup> IPL contends that Midwest ISO's stakeholder process and website postings do not obviate the need for protections against unintended consequences because SPP's planning process involves considerable stakeholder deliberation and electronic availability of relevant documents.<sup>232</sup> Therefore, IPL argues that *ex ante* stakeholder input and document availability is no basis for distinguishing Midwest ISO from SPP. Moreover, IPL states that the Commission did not identify one drawback from implementing IPL's requested protections.

110. Illinois Commission states that the Commission erred in not eliminating Midwest ISO's out-of-cycle review process.<sup>233</sup> Illinois Commission alleges that the continued justness and reasonableness of the out-of-cycle review process must be revisited if it will apply to MVP projects because the out-of-cycle review process was developed and approved before the MVP category was developed.<sup>234</sup> Illinois Commission explains that, according to the existing Tariff, an out-of-cycle review process may be triggered by a transmission owner if the transmission owner "determines that system conditions warrant the urgent development of system enhancements that would be jeopardized unless [Midwest ISO] performs an expedited review of the impacts of the project."<sup>235</sup> Illinois Commission argues that this language is impermissibly vague because many of the terms

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<sup>231</sup> IPL Request for Rehearing at 36-37 (citing MVP Order, 133 FERC ¶ 61,221 at P 244).

<sup>232</sup> IPL Request for Rehearing at 37-39 (citing *Southwest Power Pool*, 132 FERC ¶ 61,042, at P 59 (2010) (July 15, 2010 Order)).

<sup>233</sup> Illinois Commission Request for Rehearing at 37. *See also* MVP Order, 133 FERC ¶ 61,221 at n.271.

<sup>234</sup> Illinois Commission Request for Rehearing at 38.

<sup>235</sup> Illinois Commission Request for Rehearing at 37 (citing Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. FF, § I.B.1.C).



therein are undefined. Illinois Commission also claims that the language is discriminatory because it grants undue preference to transmission owners and provides them with unilateral authority to decide whether an expedited review process is warranted. Therefore, Illinois Commission reiterates its request that the out-of-cycle review process language should be eliminated or at least restricted to only the reliability project category for which it was developed or for projects where transmission owners agree to share the costs of the project.

## **6. Consistency with Transmission NOPR**

111. MISO Northeast Transmission Customers request rehearing of the MVP Order on the basis that it conflicts with the Commission's Transmission NOPR and was arbitrary and capricious because a final rule on transmission cost allocation is imminent. They argue that Filing Parties' proposal fails to meet the six standards set forth in the Transmission NOPR.<sup>236</sup> They also contend that accepting the MVP Proposal while the Transmission NOPR was pending was premature and inappropriate because "it is unrealistic to assume that, once made, decisions of this magnitude could simply be unwound following the issuance of the [f]inal [r]ule."<sup>237</sup> By accepting the MVP Proposal subject to a regulatory "true-up" following issuance of the final rule, MISO Northeast Transmission Customers claim that the Commission has improperly influenced the pending rulemaking proceeding, if not engaged in administrative rulemaking by fiat contrary to the Administrative Procedure Act. They maintain that it is logical to assume that the outcome of the Transmission NOPR proceeding will mirror the MVP Order, which will reduce participation in the Transmission NOPR proceeding and other rulemaking proceedings wherein the Commission considers substantial policy revisions. They add that the Administrative Procedure Act prohibits the Commission from unilaterally promulgating new rules and thereafter making a meaningless show of soliciting input from the public.

### **C. Commission Determination**

112. As the Commission noted in the MVP Order, changing operational circumstances in the Midwest ISO region, including continually evolving demands placed on the transmission grid, and corresponding changes to operation of the transmission grid in that

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<sup>236</sup> MISO Northeast Transmission Customers' specific arguments regarding the six standards reiterate statements made in their original protest and are not repeated here. *See* MISO Northeast Transmission Customers September 10, 2010 Protest and Request for Hearing, Docket No. ER10-1791-000, at 16-24.

<sup>237</sup> MISO Northeast Transmission Customers Request for Rehearing at 23.

region, have spurred a transition from relatively local transmission system planning to regional planning.<sup>238</sup> The expansion of energy markets across the Midwest ISO region, the need to modernize aging infrastructure, and the need to maintain reliable service have also tested existing transmission planning and cost allocation mechanisms. Midwest ISO also faces regulatory challenges: new federal and state policy initiatives, such as the increasing adoption of renewable portfolio standards, other state policies that promote increased reliance on renewable energy resources, and a focus by Congress and the Commission on promoting reliability and economically efficient transmission infrastructure development.<sup>239</sup>

113. While Midwest ISO has undergone significant operational changes in the face of many regulatory challenges since its inception, we note that Midwest ISO continues to serve its members and fulfill its core mission, including providing reliable systems and operations and planning for long-term efficiency,<sup>240</sup> through improved grid reliability and more efficient utilization of all resources. In fulfilling this mission, Midwest ISO utilizes its stakeholder and committee processes to ensure that issues of importance to stakeholders are voiced and weighed equitably. Issue-related committees, task forces and working groups have their end products reviewed by the sector-weighted Advisory Committee before being sent to the independent Board of Directors for final approval. Finally, Midwest ISO submits changes or additions to its Tariff for review and approval by the Commission. In this manner, all stakeholders can be assured of having their arguments heard and acted upon in an independent and neutral way.<sup>241</sup>

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<sup>238</sup> MVP Order, 133 FERC ¶ 61,221 at P 190.

<sup>239</sup> See generally 16 U.S.C. §§ 824o, 824s (2006) (regarding the siting of interstate transmission facilities and transmission infrastructure investment, respectively); Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 19-22.

<sup>240</sup> See *Midwest Independent Transmission System Operator, Inc.*, 133 FERC ¶ 61,068, at P 17 (2010) (order accepting Midwest ISO's Order No. 719 compliance filing) ("Midwest ISO states that it has posted on its website its mission statement, which reads as follows: 'Midwest ISO will provide our customers with valued services, reliable systems and operations, dependable and transparent pricing, open access to markets, and planning for long-term efficiency.'").

<sup>241</sup> See, e.g., *Midwest ISO, Leadership and Governance*, available at <https://www.midwestiso.org/AboutUs/LeadershipGovernance/Pages/LeadershipGovernance.aspx>.

114. Previously, Midwest ISO reformed its transmission planning process in accordance with the nine transmission planning principles that the Commission announced in Order No. 890.<sup>242</sup> That rule did not “prescribe any specific cost allocation method,” and it stated that the Commission would “allow regional flexibility on cost allocation.”<sup>243</sup> Order No. 890 explained that the Commission’s “decisions regarding transmission cost allocation reflect the premise that ‘allocation of costs is not a matter for the slide-rule. It involves judgment on a myriad of facts. It is not an exact science.’”<sup>244</sup>

115. After an extensive stakeholder process held to address the Commission’s directives in the October 23, 2009 Order, Filing Parties submitted the stakeholder-developed MVP Proposal for approval, explaining that the proposal recognizes that evolving industry and public policy conditions have required a paradigm shift to facilitate the development of new transmission facilities to satisfy multiple objectives, such as addressing reliability needs, accommodating renewable resources and other location-constrained generating facilities, and providing economic benefits.<sup>245</sup> The Commission approved the MVP Proposal, concluding that the proposal is a just and reasonable package of transmission planning revisions.

116. The Commission found that the MVP Proposal represents the next step in Midwest ISO’s evolution; it is Midwest ISO’s solution to overcoming the challenges inherent in maintaining and expanding a transmission system that must meet diverse needs. The Commission analyzed it using the three interrelated factors described in Order No. 890:

[W]hen considering a dispute over cost allocation, [we] exercise our judgment by weighing several factors. First, we consider whether a cost allocation proposal fairly assigns costs among participants, including those who cause them to be incurred and those who otherwise benefit from them. Second, we consider whether a cost allocation proposal provides adequate incentives to construct new transmission. Third, we consider whether the

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<sup>242</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 123 FERC ¶ 61,164 (2008) (May 15, 2008 Order).

<sup>243</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559 (quoting *Colorado Interstate Gas Co. v. FPC*, 324 U.S. 581, 589 (1945) (*Colorado Interstate Gas*)).

<sup>244</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559 (quoting *Colorado Interstate Gas*, 324 U.S. at 589).

<sup>245</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 11-12, 15.

proposal is generally supported by state authorities and participants across the region.<sup>246</sup>

Weighing these three factors again on rehearing, we affirm that the MVP Proposal is just and reasonable, and deny rehearing. We continue to find, based on the record, that the MVP Proposal enjoys broad state authority and stakeholder support, presents significant incentives to construct new transmission, and fairly allocates the costs of new transmission fairly to the market participants that use the Midwest ISO transmission grid and who will benefit from its maintenance and further development.

1. **The MVP Order is Consistent with Cost Causation and *Illinois Commerce Commission***

117. Various parties challenge the Commission's approval of the MVP Proposal on the basis that Midwest ISO did not perform a utility-by-utility analysis of the costs and benefits of MVPs. Hoosier-SIPC, for example, claims that Midwest ISO failed to demonstrate that any benefits from MVPs will accrue to Hoosier or SIPC, and therefore the Commission's decision to permit allocation of MVP costs to them is arbitrary and capricious; others make similar claims.<sup>247</sup> AMP challenges the MVP Order on a similar basis, criticizing the Midwest ISO studies for focusing on regional benefits and not addressing the extent to which MVPs benefit individual entities or zones.<sup>248</sup> Similarly, Illinois Commission observes that in *Illinois Commerce Commission*, the court discussed cost causation in terms of Midwest ISO "members," "Commonwealth Edison," "the customer," and "party."<sup>249</sup> Illinois Commission contends that the court's use of disparate terms for entities that cause costs indicates that, by examining benefits in the aggregate,

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<sup>246</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

<sup>247</sup> See, e.g., IPL Request for Rehearing at 27-28; AMP Request for Rehearing at 6-7; Illinois Commission Request for Rehearing at 15-16. On rehearing, petitioners use various terms, such as "party-by-party" or "customer-by-customer," to denote the more granular level at which they believe *Illinois Commerce Commission* requires cost allocation analysis to consider. This terminology is different from the phrasing used by the Seventh Circuit, which refers to utilities and groups of utilities. For the sake of the discussion below, we adopt the phrase utility-by-utility to refer to the more granular level of analysis some petitioners support. We note, however, that where court or Commission precedent is cited, the original language and phrasing is retained.

<sup>248</sup> AMP Request for Rehearing at 12-14.

<sup>249</sup> Illinois Commission Request for Rehearing at 15-16. See also IPL Request for Rehearing at 6-7.

Midwest ISO did not satisfy *Illinois Commerce Commission*'s requirement that it compare benefits to costs on some granular basis.

118. Under the cost causation principle, "it has been traditionally required that all approved rates reflect to some degree the costs actually caused by the customer who must pay them."<sup>250</sup> The courts, recognizing that cost allocation is "not a matter for the slide-rule,"<sup>251</sup> have never "required a ratemaking agency to allocate costs with exacting precision;"<sup>252</sup> rather, "the cost allocation mechanism must not be 'arbitrary or capricious' in light of the burdens imposed or benefits received."<sup>253</sup>

119. The rehearing arguments focus on a single passage from the most recent appellate decision regarding cost allocation. In *Illinois Commerce Commission*, the Seventh Circuit partially remanded a Commission order adopting a postage-stamp cost allocation methodology for new transmission facilities that operate at or above 500 kV in PJM. The court concluded that in accepting PJM's cost allocation proposal, the Commission did not establish that midwestern utilities in PJM would receive "enough of a benefit to justify the costs that [the Commission] want[ed] shifted to those utilities."<sup>254</sup> The court explained that the Commission does not have to quantify benefits with precision.<sup>255</sup> If the Commission cannot quantify the benefits to the midwestern utilities, the Court stated that it must have "an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities'" share of the costs.<sup>256</sup>

120. In support of their arguments that the MVP Proposal does not properly match costs to benefits, parties rely on language quoted in *Illinois Commerce Commission* that

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<sup>250</sup> *KN Energy, Inc. v. FERC*, 968 F.2d 1295, 1300 (D.C. Cir. 1992) (*KN Energy*).

<sup>251</sup> *Colorado Interstate Gas*, 324 U.S. at 589.

<sup>252</sup> *Midwest ISO Transmission Owners*, 373 F.3d at 1369 (citing *Sithe*, 285 F.3d 1).

<sup>253</sup> *Midwest ISO Transmission Owners*, 373 F.3d at 1369. *See also Alcoa Inc. v. FERC*, 564 F.3d 1342 (D.C. Cir. 2009) (in ratemaking matters, the court's review is highly deferential since issues of rate design are fairly technical and, if not technical, involve agency policy judgments).

<sup>254</sup> *Illinois Commerce Commission*, 576 F.3d at 477.

<sup>255</sup> *Id.* ("the Commission [does not have] to calculate benefits to . . . the last million or ten million or perhaps hundred million dollars.").

<sup>256</sup> *Illinois Commerce Commission*, 576 F.3d at 477.

the Commission has a duty to “compar[e] the costs assessed against a party to the burdens imposed or benefits drawn by that party.”<sup>257</sup> They contend that because the MVP Proposal does not purport to make such a comparison, the Commission lacked a reasoned basis for finding that it is just and reasonable. For three principal reasons, we disagree.

**a. Court Precedent Does Not Require a Utility-by-Utility Cost-Benefit Analysis**

121. First, in focusing on this language, parties ignore the Seventh Circuit’s analysis, which relies on the discussion of the cost causation principle in *Midwest ISO Transmission Owners* and *Western Massachusetts*.<sup>258</sup> In *Midwest ISO Transmission Owners*, the court stated that it “evaluate[s] compliance with this unremarkable principle by comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party,”<sup>259</sup> but it did not require the narrow, utility-by-utility analysis of costs and benefits that the requests for rehearing pursue.<sup>260</sup> Instead, the court agreed with, and relied on, the Commission’s premise that all users of the grid operated by Midwest ISO, not only those transmission loads subject to the tariff rates, benefit from the services provided by Midwest ISO, and should therefore bear a fair share of Midwest ISO’s

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<sup>257</sup> *Illinois Commerce Commission*, 576 F.3d at 477 (quoting *Midwest ISO Transmission Owners*, 373 F.3d at 1368).

<sup>258</sup> *Illinois Commerce Commission*, 576 F.3d at 477 (citing *Midwest ISO Transmission Owners*, 373 F.3d at 1368-69; *Western Massachusetts Electric Company v. FERC*, 165 F.3d 922 (D.C. Cir. 1999) (*Western Massachusetts*)).

<sup>259</sup> *Midwest ISO Transmission Owners*, 373 F.3d at 1369.

<sup>260</sup> “Not surprisingly, we have never required a ratemaking agency to allocate costs with exacting precision.” *Midwest ISO Transmission Owners*, 373 F.3d at 1369.

costs.<sup>261</sup> In citing *Western Massachusetts*, the Seventh Circuit approved the application of this long-applied premise in any integrated transmission network.<sup>262</sup>

122. In *Western Massachusetts*, the D.C. Circuit approved the Commission's rationale that "[w]hen a system is integrated, any system enhancements are presumed to benefit the entire system."<sup>263</sup> The Commission's analysis in *Western Massachusetts*, cited by the Seventh Circuit as an example of the analysis that it sought from the Commission in the orders underlying *Illinois Commerce Commission*,<sup>264</sup> was not a utility-by-utility analysis. Rather, the analysis examined whether any "other grid customers" besides the qualifying generator "will make use of and benefit from" the new transmission.<sup>265</sup> The Commission based its cost allocation on findings that one purpose of the new transmission was "to enhance a system used by many customers" and a loadflow study prediction that other customers would be able to make use of the new transmission grid facilities.<sup>266</sup> We conclude that the Seventh Circuit's repeated reliance on *Western Massachusetts* and *Midwest ISO Transmission Owners* indicate that it does not require a utility-by-utility cost-benefit analysis.

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<sup>261</sup> See *Midwest ISO Transmission Owners*, 373 F.3d at 1370-71. See also *Midwest Indep. Transmission Sys. Operator, Inc.*, Opinion No. 453, 97 FERC ¶ 61,033, at 61,169 (2001) ("We agree with the presiding judge that all users of the grid operated by the Midwest ISO will benefit from the Midwest ISO's operational and planning responsibilities for the Midwest ISO transmission system, as well as increased grid reliability of the transmission system."); *Midwest Indep. Transmission Sys. Operator, Inc.*, Initial Decision, 89 FERC ¶ 63,008, at 65,045 (1999) (same).

<sup>262</sup> *Illinois Commerce Commission*, 576 F.3d at 477 (citing *Western Massachusetts* for an example of when "[the Commission] can presume that new transmission lines benefit the entire network"); see *Western Massachusetts*, 165 F.3d at 927 (noting the Commission's "consistent policy to assign the costs of system-wide benefits to all customers on an integrated transmission grid").

<sup>263</sup> 165 F.3d at 927 (upholding the roll-in of grid upgrades necessary to integrate power purchased from a PURPA qualifying facility generator).

<sup>264</sup> *Illinois Commerce Commission*, 576 F.3d at 477 (the Commission did not avoid the duty of "comparing the costs assessed against a party to the burdens imposed or benefits drawn by that party" in *Western Massachusetts*).

<sup>265</sup> *Western Massachusetts*, 165 F.3d at 927.

<sup>266</sup> *Western Massachusetts*, 165 F.3d at 927.

123. Rather than representing a break with cost causation precedent, as the requests for rehearing contend, *Illinois Commerce Commission* turned on the court's finding that the Commission failed to provide sufficient evidence to support PJM's regional cost allocation proposal:

No doubt there will be *some* benefit to the midwestern utilities just because the network *is* a network, and there have been outages in the Midwest. But enough of a benefit to justify the costs that [the Commission] wants shifted to those utilities? Nothing in the Commission's opinions enables an answer to that question.<sup>267</sup>

The court explained further:

If [the Commission] cannot quantify the benefits to the midwestern utilities from new 500 kV lines in the East, even though it does so for 345 kV lines, but it has an articulable and plausible reason to believe that the benefits are at least roughly commensurate with those utilities' share of total electricity sales in PJM's region, then fine: the Commission can approve PJM's proposed pricing scheme on that basis.<sup>268</sup>

The requests for rehearing therefore misapprehend the holding of *Illinois Commerce Commission*, which faulted the Commission for an evidentiary failure, not an analytical one. And the question becomes not whether the MVP Proposal matches costs to benefits on a utility-by-utility basis, but whether it will provide sufficient benefits to the entire Midwest ISO region to justify a regional allocation of costs.

124. Exelon contends that the notion of regional benefits means little in the multi-state Midwest ISO footprint, and that the record of this case does not demonstrate that MVPs satisfy the "roughly commensurate" comparison defined in *Illinois Commerce Commission*. Hoosier-SIPC and Industrial Customers add that Midwest ISO's economic analysis does not support, and may even undermine, Midwest ISO's assertions that the MVP Proposal will benefit its region. We continue to conclude, however, that Midwest ISO made an appropriate demonstration that the MVP Proposal benefits the entire Midwest ISO region, satisfies the "roughly commensurate" comparison, and is just and reasonable. Reviewing courts have consistently held that there is a presumption that transmission system "upgrades designed to preserve the grid's reliability constitute

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<sup>267</sup> *Illinois Commerce Commission*, 576 F.3d at 477 (emphasis in original).

<sup>268</sup> *Illinois Commerce Commission*, 576 F.3d at 477.



system enhancements that . . . benefit the entire system.”<sup>269</sup> The corollary to this presumption is that, since all members of an integrated system benefit from system enhancements, they should share the costs of such enhancements.<sup>270</sup> The Seventh Circuit recognized this presumption, but noted that it does not relieve the Commission of the need to compare costs and benefits.<sup>271</sup> In the MVP Order, the Commission met this burden, examining the evidence presented by Midwest ISO and supporters and opponents of the MVP Proposal and concluding that the MVP Proposal is just and reasonable.

125. Midwest ISO, like other Commission-approved RTOs, operates its transmission system and energy market on a single-system regional basis to reliably and efficiently integrate resources to serve loads throughout its entire footprint. Midwest ISO conducts regional planning of its transmission network that reflects its single-system regional operations in order to enhance the reliability and efficiency of its regional market operations. The strong regionally-integrated transmission network that results from this process provides benefits to all that are interconnected to it. The fundamental benefit of the facilities supporting regional power flows is the flexibility they provide to deliver energy and operating reserves more efficiently and reliably within and between balancing areas throughout the Midwest ISO footprint, by way of centralized generation dispatch.<sup>272</sup>

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<sup>269</sup> *Midwest ISO Transmission Owners*, 373 F.3d at 1369 (citing *Entergy Servs., Inc. v. FERC*, 319 F.3d 536, 543-44 (D.C. Cir. 2003) (*Entergy*) (system upgrades that prevent degradation of reliability benefit all system users; “benefits” are not limited to increases in capacity or to enhancements other than maintained stability in an expanded system); *Western Massachusetts*, 165 F.3d at 927 (“When a system is integrated, any system enhancements are presumed to benefit the entire system.”)).

<sup>270</sup> See, e.g., *Midwest ISO Transmission Owners*, 373 F.3d at 1371 (all members draw benefits from being part of a regional transmission system and thus should share administrative costs); *Calif. Dept. of Water Res. v. FERC*, 489 F.3d 1029, 1038-39 (9th Cir. 2007) (“Because DWR [a third-party generator] benefits from the integrated grid, [the Commission] reasonably required it to pay its share of the cost [of new facilities].”).

<sup>271</sup> *Illinois Commerce Commission*, 576 F.3d at 477.

<sup>272</sup> Midwest ISO ensures cost minimization by dispatching generation across its system in regular, short intervals:

The Midwest ISO energy and operating markets were designed to ensure that the cost of energy and operating reserves are minimized at all times

(continued...)

126. Although the benefits of integrated regional planning may be more appreciated to greater or lesser degrees at different times by different customers with respect to different groups of transmission projects, these benefits are nevertheless experienced by all Midwest ISO members and accrue over time.<sup>273</sup> Too granular a focus would undermine the benefits and advantages provided by membership in Midwest ISO.<sup>274</sup>

127. As discussed in the MVP Order, Filing Parties performed a quantitative analysis of the benefits versus the costs of an indicative starter list of MVPs. They found that the projects would deliver between \$582 million and \$798 million in annual economic benefits, beginning in 2015, from expected production cost savings, reductions in transmission losses, and a reduction in the region's reserve margins.<sup>275</sup> Filing Parties also anticipate quantifiable estimated savings: deferred capacity investment savings of potentially \$110 million due to reduction in peak demand losses;<sup>276</sup> reduction in planning reserve margin requirements with potential deferred capacity investment of up to \$2.3 billion.<sup>277</sup> In alleging that Midwest ISO's studies at face value fail to support MVP

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based on current offers and system constraints. This is accomplished by frequently redispatching generation, demand response, and dispatchable external transactions to achieve new operating points that minimize costs based on continuous changes in system demand, loop flows, fixed external transactions, and the operational status of resources and transmission elements. In day-ahead markets, the system is redispatched every hour. . . . In real-time markets, the system is redispatched every five minutes, so there are 105,120 real-time dispatches per year.

Filing Parties July 15, 2010 Filing, Curran Test. at 13.

<sup>273</sup> "As [Midwest ISO Transmission Owners] themselves recognized in their application to [the Commission] to establish [Midwest ISO], benefits such as 'an overall reduction in the costs of transmitting energy within the region' and 'large scale regional coordination and planning of transmission' would redound to all users of the transmission grid." *Midwest ISO Transmission Owners*, 373 F.3d at 1371 (quoting *Midwest Indep. Transmission Sys. Operator, Inc.*, 84 FERC ¶ 61,231, at 62,140 (1998)).

<sup>274</sup> See, e.g., Midwest ISO, Value Proposition, available at <https://www.midwestiso.org/WhatWeDo/ValueProposition/Pages/ValueProposition.aspx>.

<sup>275</sup> MVP Order, 133 FERC ¶ 61,221 at P 34.

<sup>276</sup> Filing Parties July 15, 2010 Filing, Lawhorn Test. at 15; *id.*, Curran Test. at 24.

<sup>277</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 25.

cost causation, Hoosier-SIPC fail to acknowledge these other areas of quantifiable estimated savings.<sup>278</sup> Industrial Customers' suggestion that net savings could be negative rests on inaccurate assumptions about the transmission system, namely that: (1) the transmission system is static and that benefits do not accrue over time, and (2) the transmission system is not integrated such that facilities built for one purpose will not produce additional quantitative and qualitative benefits elsewhere.

128. The extent to which demand response and energy efficiency programs mitigate growth in peak load will be the subject of on-going data collection and study. We fully expect that, with increased experience with demand response and energy efficiency programs, Midwest ISO and its stakeholders will take these resources into account in determining the need for transmission expansion, consistent with its Order No. 890 compliant transmission planning process which requires comparability.<sup>279</sup> The possibility that load will not increase significantly over time does not mean, as Industrial Customers would have it, that further transmission expansion is unnecessary. New transmission may be necessary to bring emerging technologies – including renewable generation and demand-reduction resources – to the Midwest ISO marketplace. It is appropriate for Midwest ISO to plan accordingly.

129. We disagree with IPL's claim that the transmission usage study was the primary support for the MVP Proposal and was too broad to be useful. First, the transmission usage study was one part of the support provided by Filing Parties for the MVP cost allocation proposal which included an estimate of economic benefits for an indicative group of projects as well as a functional approach to transmission planning. In considering the transmission usage study together with this other evidence, the Commission found "an articulable and plausible reason" for determining that the regional usage and the tangible and quantified benefits of MVPs that Midwest ISO demonstrated will be distributed to users across the region in a manner that justifies regional allocation

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<sup>278</sup> In addition, as further discussed *infra*, Filing Parties' economic analysis appears to understate the total benefits of an MVP. There may be additional quantifiable and unquantifiable economic benefits that are not captured in the studies.

<sup>279</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 494: "Further, we agree with commenters that customer demand resources should be considered on a comparable basis to the service provided by comparable generation resources where appropriate." Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 216: "As part of its Attachment K planning process, each transmission provider is required to identify how it will treat resources on a comparable basis and, therefore, should identify how it will determine comparability for purposes of transmission planning."

of MVP costs.<sup>280</sup> Second, IPL's claim is based on the erroneous conclusion that *Illinois Commerce Commission* requires a load-serving entity based benefits analysis. As described above, that case does not require such a granular analysis; the court's decision turned on whether the Commission had supported its decision with sufficient evidence. In this case, the Commission has an articulable and plausible reason to conclude that the costs imposed are roughly commensurate with the benefits received based, among other things, on the transmission usage study, which demonstrates that the use of MVPs would be overwhelmingly regional (80 percent). Accordingly, we reject IPL's challenge to the transmission usage study. With respect to Hoosier-SIPC's claim that MISO has not provided project-specific cost-benefit information, we note that, in Order No. 890, the Commission required RTOs and ISOs to engage in coordinated, open and transparent transmission planning, including by disclosing "to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans."<sup>281</sup> Consistent with the principles of Order No. 890, Midwest ISO should share its analysis of proposed MVP portfolios and seek stakeholder input on that analysis. However, we recognize that Midwest ISO may perform intermediate analyses in order to test candidate projects for potential inclusion in an MVP portfolio, and we find that it would be unduly burdensome to require Midwest ISO to provide the results of all of these intermediate analyses to stakeholders.

**b. Utility-by-Utility Analysis of MVPs Would be Inconsistent with the Principles Underlying RTOs**

130. Second, we observe that requiring a utility-by-utility analysis of costs and benefits for MVPs would be inconsistent with the regional nature of RTOs. In Order No. 2000, the Commission detailed the benefits independent RTOs could provide, including helping to eliminate the opportunity for undue discrimination by transmission providers and improving transmission grid management efficiencies and reliability.<sup>282</sup> The Commission explained that RTOs would increase efficiency through regional transmission pricing and the elimination of rate pancaking, and provide more efficient planning for transmission and generation investments. These benefits, however, are due to the regional nature of RTOs. Requiring Midwest ISO to trace the costs and benefits of

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<sup>280</sup> See MVP Order, 133 FERC ¶ 61,221 at P 227-38.

<sup>281</sup> See Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471; Order No. 890-A, FERC Stats. & Regs. ¶ 31,261 at P 199.

<sup>282</sup> Order No. 2000, FERC Stats. & Regs. ¶ 31,089 at 31,024, *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092, *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

MVPs to individual parties would eliminate many of the benefits provided by Midwest ISO as an integrated system. Requiring a utility-by-utility analysis for the planning or cost allocation of MVPs would be inconsistent with the structure and intended purpose of Midwest ISO's operation as an RTO to provide increased efficiencies and benefits that are unachievable except through regionally coordinated operation.

131. In interpreting the cost causation requirement of *Illinois Commerce Commission*, we apply our understanding of the current capabilities and limitations of the available tools used to measure the benefits of an integrated network. While a few of the many direct benefits of transmission expansion can be measured at the level of the load-serving entity, even these measurements become tenuous and undependable as time passes and the network evolves. Like any large electric network, the Midwest ISO grid is constantly changing in ways that are sometimes unpredictable. This can include generator failures, changes in environmental requirements that impact production, weather catastrophes, population changes and migrations, and economic-driven changes to industrial and other large loads. The expenditure of resources to gather this benefit information for each of the 130 members of Midwest ISO that might be allocated the costs of MVPs (that are still in the early planning stages) is out of proportion with the value of the information gathered. Importantly, such an effort would entirely fail to capture many of the benefits of long-lived high-voltage transmission lines on a utility-by-utility basis. Although production cost models do exist, they do not, for example, address certain reliability benefits which may be difficult or impossible to quantify.<sup>283</sup> In addition, reliance upon such a granular analysis to allocate the costs of backbone transmission facilities would

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<sup>283</sup> As the Commission noted in the MVP Order: "The inability of a model to economically quantify the reliability benefit of any particular transmission line does not mean that there is no value to reliability. Studies show that customers value dependable electricity and that outages cause real economic losses." MVP Order, 133 FERC ¶ 61,221 at P 202 (citing Peter Fox-Penner, *A Year Later, Lessons From the Blackout*, N.Y. Times, Aug. 15, 2004 at 14WC. See also Primen, *The Cost of Power Disturbances to Industrial & Digital Economy Companies* (Jun. 29, 2001), at D-1, available at <http://www.onpower.com/pdf/EPRICostOfPowerProblems.pdf> (visited Dec. 14, 2010)). See also Joseph Eto, Jonathan Koomey, Bryan Lehman, Nathan Martin, Evan Mills, Carrie Webber and Ernst Worrell, "Scoping Study on Trends in the Economic Value of Electricity Reliability to the U.S. Economy," Lawrence Berkeley National Laboratory paper #LBNL-47911, available at <http://certs.lbl.gov/pdf/47911.pdf>.

lead to many parties receiving unquantifiable benefits without having to pay costs, a result that is contrary to court precedent.<sup>284</sup>

c. **The MVP Proposal Requires Analysis of Costs and Benefits on Many Levels**

132. Third, with regard to this specific proposal, we observe that a proposed transmission project must pass through analysis and planning processes in order to receive MVP cost allocation. The three MVP Criteria (plus the Exclusion Criteria) are used to identify projects that are regionally beneficial; for that reason, the criteria are not irrelevant to the cost allocation process as AMP argues.<sup>285</sup> Any project that is considered for MVP cost allocation must go through Midwest ISO's transmission planning process,<sup>286</sup> in which Midwest ISO and its stakeholders consider (through studies and other data) whether the benefits of transmission projects are roughly commensurate with the allocated costs of those projects and evaluate projects against alternatives, rejecting the proposed MVP treatment of a project if it is not justified. And, as further discussed below, Midwest ISO will aggregate projects into a portfolio in order to ensure that the benefits and the costs of the projects accrue throughout the Midwest ISO region.

133. That a regional allocation of costs is justified does not mean that Midwest ISO and the MVP Proposal are insensitive as to how the benefits of new transmission accrue throughout the footprint, either at a given point in time or over a period of time. For

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<sup>284</sup> See, e.g., *Connecticut Dept. of Pub. Util. Control v. FERC*, 569 F.3d 477, 479 (D.C. Cir. 2009) (describing analogous regional transmission organization "free rider problem" in which "some utilities count on the capacity they expect others to buy in order to support their own reliability").

<sup>285</sup> Nor are the criteria the sole determinant of what transmission projects should receive regional cost sharing. For this reason, we disagree with Industrial Customers' argument that Criterion 2 does not prevent projects with only localized benefits from qualifying for regional cost sharing. Midwest ISO's evaluation of projects pursuant to Criterion 2 is one part of a lengthy, detailed transmission planning process that will result in the designation of projects that should receive regional cost sharing. And because the analysis used to determine whether a project meets these criteria addresses the issue of who benefits from a particular project, Industrial Customers' argument that Criteria 2 and 3 do not match the costs of a particular project to benefits misses its mark. Further, the argument that Criterion 2 is invalid because it does not solve a reliability violation ignores that each of the three MVP Criteria targets different issues.

<sup>286</sup> MVP Order, 133 FERC ¶ 61,221 at P 30.

example, transmission projects that qualify as MVPs under Criterion 2 must provide “multiple types of economic value across multiple pricing zones with a Total MVP Benefit-to-Cost [R]atio of 1.0 or higher . . . .”<sup>287</sup> Midwest ISO will verify that a potential MVP has a Total MVP Benefit-to-Cost Ratio of 1.0 or more (i.e., that the “present value of the financially quantifiable economic benefits projected for the first 20 years of the project’s life” exceeds “the present value of the projected annual revenue requirement for the first 20 years of the project’s life”).<sup>288</sup> If the total project benefits exceed the costs, Midwest ISO will then estimate the allocation of projected benefits and costs to each pricing zone to ensure that multiple zones realize economic value.<sup>289</sup> Midwest ISO has memorialized in its Tariff the types of economic value it looks for in making this analysis.<sup>290</sup> Some of these economic benefits are not readily susceptible to quantification; others will last beyond the first 20 years of the project’s life, which is the time period analyzed.<sup>291</sup> Midwest ISO’s studies regarding projects qualifying under Criterion 2 will, therefore, understate by design both the level of economic benefits that an MVP will provide to the Midwest ISO region and the length of time for which the benefits will be realized.

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<sup>287</sup> Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451A (quoted in MVP Order, 133 FERC ¶ 61,221 at P 29).

<sup>288</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 35. Financially quantifiable economic benefits include production cost savings, transmission loss reductions, and maintaining or reducing capacity reserve margins. *Id.* at 7. *See also* Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 3451D and 3451E.

<sup>289</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 35.

<sup>290</sup> The Tariff specifically identifies production cost savings, which may be realized in several ways, such as through reductions in transmission congestion and transmission energy losses; capacity losses savings, where capacity losses represent the amount of capacity required to serve transmission losses during the system peak hour; capacity savings; long-term cost savings achieved by transmission customers; and any other financially quantifiable benefits. Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 3451D and 3451E. This addresses IMEA’s concern that Midwest ISO has not defined what will constitute costs and benefits for purposes of developing the ratio. We will not circumscribe or limit what Midwest ISO and its stakeholders may consider in performing their analyses.

<sup>291</sup> *See* Filing Parties July 15, 2010 Filing, Curran Test. at 36 (“[I]t is difficult to project with any certainty the economic benefits associated with a project toward the end of a project’s life given typical life spans of 40 or more years.”).

134. Likewise, Midwest ISO's analysis of Criterion 3 candidate projects is limited to financially quantifiable benefits – and the benefits of new transmission projects for reliability purposes often are not susceptible to quantification – and to the first 20 years of a transmission project's life; as such, it is likely to underestimate total benefits.<sup>292</sup> MVPs that qualify under Criterion 3 “must address at least one Transmission Issue associated with a projected violation of a NERC or Regional Entity standard and at least one economic-based Transmission Issue that provides economic value across multiple pricing zones. The project must generate totally financially quantifiable benefits, including quantifiable reliability benefits, in excess of the total project costs . . . .”<sup>293</sup> Accordingly, in analyzing whether a project qualifies for MVP treatment under Criterion 3, Midwest ISO will first determine that a proposed project resolves a projected violation of a NERC or Regional Entity Standard.<sup>294</sup> If it does, then Midwest ISO will determine the specific economic benefits associated with the proposed project to ensure that they exceed the project costs, using the same Total MVP Benefit-to-Cost Ratio that it uses for Criterion 2 projects.<sup>295</sup> If the project passes this test, then Midwest ISO will ensure that value is present in multiple pricing zones by estimating the allocation of

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<sup>292</sup> Even the PJM methodology for allocating the costs of 345 kV lines, cited with approval in *Illinois Commerce Commission*, does not monetize the reliability benefits of those facilities. Rather, the DFAX methodology measures each load's power flows over a constrained facility as a percentage of total power flows over that facility and, based on those percentages, allocates the costs of upgrades needed to resolve foreseeable reliability violations. See PJM, FERC Electric Tariff, Schedule 12(b)(iii)(C). Any “quantification of benefits” resulting from application of this method comes from an unstated (and currently untested) assumption that the benefits to loads from a required reliability upgrade are proportional to that load's power flows across the constrained facility before the upgrade is built.

<sup>293</sup> Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451B (quoted in MVP Order, 133 FERC ¶ 61,221 at P 29).

<sup>294</sup> Degraded reliability, resulting from forgoing MVPs in one part of Midwest ISO that resolve violations of NERC or Regional Entity Standards, is a threat to the entire Midwest ISO grid and every customer taking service on that grid. Experience shows that reliability violations in one small part of Midwest ISO can have severe financial and even life-threatening effects on the entire Midwest ISO network. U.S.-Canada Power System Outage Task Force, Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations (Apr. 2004) *available at* <https://reports.energy.gov/>.

<sup>295</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 37.



projected benefits and costs to each pricing zone.<sup>296</sup> We note that Midwest ISO expects that most MVPs are likely to provide all three types of regional benefits,<sup>297</sup> which also suggests that it anticipates widely distributed benefits.

135. IMEA and Hoosier-SIPC argue that Midwest ISO's definition of "regional" means that they will have to pay for transmission projects that provide benefits to other pricing zones, in violation of *Illinois Commerce Commission*. As detailed above, *Illinois Commerce Commission* turned on the lack of evidence to support PJM's regional cost allocation proposal. It did not disavow prior findings that members of Midwest ISO benefit from having a transmission network,<sup>298</sup> or that new transmission may provide widespread benefits to the grid.<sup>299</sup> There is factual support in the record for the Commission's acceptance of the MVP Proposal, and Midwest ISO will engage in a multi-step process in order to ensure that costs are allocated fairly. We also take issue with IMEA's characterization of the logic supporting the Commission's finding that MVPs may have regional benefits, which we read to mean, essentially, that regional benefits are whatever Midwest ISO and its stakeholders say they are. The types of economic and reliability benefits that will be considered for the purposes of cost allocation are specified, and each of the three criteria requires that the grid, as a whole, benefit from an MVP.

**d. The MVP Criteria are a Component of a Just and Reasonable Cost Allocation Proposal**

136. As described above, to qualify as an MVP, a candidate project must meet at least one of the three MVP Criteria. Although each criterion is targeted toward providing

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<sup>296</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 35.

<sup>297</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 7.

<sup>298</sup> *Midwest ISO Transmission Owners*, 373 F.3d at 1371 (“[E]ven if they are not in some sense *using* the ISO, the MISO Owners still benefit from *having* an ISO. . . . Since the MISO Owners do, in fact, draw benefits from being a part of the regional transmission system, [the Commission] correctly determined that they should share the costs of *having* an ISO.”).

<sup>299</sup> *See, e.g., Western Massachusetts*, 165 F.3d at 927 (“When a system is integrated, any system enhancements are presumed to benefit the entire system.”); *Entergy*, 319 F.3d at 543-44 (system upgrades that prevent degradation of reliability benefit all system users; “benefits” are not limited to increases in capacity or to enhancements other than maintained stability in an expanded system).

specific types of regional benefits (for example, economic or reliability benefits), Midwest ISO expects that a substantial number of projects approved as MVPs will present multiple types of regional benefits.<sup>300</sup> In the MVP Order, the Commission evaluated each of the MVP Criteria and concluded that the MVP Proposal, including the MVP Criteria, is a just and reasonable package of reforms to the Midwest ISO transmission planning process that will enable Midwest ISO and its stakeholders to develop transmission facilities that will improve the Midwest ISO transmission grid.

137. The MVP Proposal provides the framework within which Midwest ISO and its stakeholders will evaluate transmission projects to determine whether they should qualify for regional cost sharing. As a component of that framework, the MVP Criteria set out the parameters for considering candidate MVPs in the Midwest ISO transmission planning process, which is compliant with Order No. 890 and the nine transmission planning principles.<sup>301</sup>

138. On rehearing, several parties challenge the Commission's acceptance of each of the MVP Criteria. The requests for rehearing do not persuade us to revisit the Commission's conclusion that the MVP Criteria ensure that MVPs evaluated and approved in the Midwest ISO transmission planning process will provide regional benefits that are roughly commensurate with the costs assessed.

**e. Criterion 1**

**i. Costs and Benefits**

139. Several parties, including AMP, Hoosier-SIPC, Illinois Commission, and OMS, challenge Criterion 1 on the basis that it does not require an examination of a project's costs and benefits that is sufficiently rigorous to satisfy cost causation principles. We continue to disagree with this criticism of Criterion 1. Our acceptance of Criterion 1 is consistent with our findings that the MVP Proposal balances the incentive to build and the cost allocation prongs of Order No. 890, and that the proposal is generally supported.

140. As discussed in the MVP Order, a project that qualifies for regional cost allocation under Criterion 1 must support a qualifying policy initiative and ““must be shown to enable the transmission system to deliver such energy in a manner that is more reliable

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<sup>300</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 7 (stating that Midwest ISO expects most MVPs to qualify under all three criteria).

<sup>301</sup> See generally May 15, 2008 Order, 123 FERC ¶ 61,164 (approving Midwest ISO's transmission planning process as consistent with Order No. 890).

and/or more economic than it otherwise would be without the transmission upgrade.”<sup>302</sup> In this way, Criterion 1 establishes a minimum threshold (i.e., that the construction of the network transmission facility must represent an improvement in reliability or economic savings than would be achieved without that same transmission facility) that will foster the efficient investment in transmission infrastructure. We construe this requirement to refer to the measurable quantifiable benefits that Midwest ISO will study as part of the transmission planning process. In addition, however, we note that certain additional benefits, such as those derived from meeting public policy mandates, are not readily susceptible to specification and/or quantification, but can be significant nonetheless. Furthermore, for the reasons articulated above, the Commission rejects challenges to Criterion 1 on the basis that it does not provide for a utility-by-utility analysis of or allocation of benefits and costs.

141. In addition, we expect that MVPs that support documented energy policy mandates or laws will permit the associated load to replace some portion of its purchases with lower-cost generation, which will increase the supply of energy available to all loads and result in lower overall energy prices. MVPs built in areas that have traditionally imported, rather than generated, energy also may create counterflows, which will reduce transmission congestion and may further decrease prices. Further, regional transmission development will facilitate the continuing development of robust competitive energy product markets and improve consumer access to those markets. All of these benefits derive from the integrated nature of the transmission grid.<sup>303</sup>

142. We are not persuaded that Midwest ISO should modify Criterion 1 to require a direct comparison of a project’s costs and benefits. The plain language of Criterion 1 requires an examination of a project’s benefits (i.e., it must support documented energy policy mandates or laws) as well as an examination of the project’s costs (i.e., it must deliver energy in a manner that is more economic than without the project). Moreover,

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<sup>302</sup> MVP Order, 133 FERC ¶ 61,221 at P 207 (quoting Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet Nos. 3451A-B) (emphasis added).

<sup>303</sup> See, e.g., Opinion No. 453, 97 FERC ¶ 61,033 at 61,169 (as amended), *aff’d sub nom. Midwest ISO Transmission Owners*, 373 F.3d at 1369 (“upgrades designed to preserve the grid’s reliability constitute system enhancements that are presumed to benefit the entire system”); *Entergy*, 319 F.3d at 543-44 (system upgrades that prevent degradation of reliability benefit all system users; “benefits” are not limited to increases in capacity or to enhancements other than maintained stability in an expanded system); *Western Massachusetts*, 165 F.3d at 927 (“When a system is integrated, any system enhancements are presumed to benefit the entire system.”).

Midwest ISO staff reviews the cost estimates of potential projects with transmission owners and other stakeholders as part of the MTEP process, including the total plan benefit-to-cost ratio associated with projects recommended for inclusion in Appendix A.<sup>304</sup> We therefore are not persuaded that the lack of an explicit requirement in Criterion 1 to weigh a project's costs against its benefits renders the proposal unjust and unreasonable; the transmission planning process will provide an opportunity for market participants to conduct such an analysis.<sup>305</sup> The stakeholder process provides a sufficient initial opportunity for stakeholders to address whether market participants are being allocated costs for a transmission line that are roughly commensurate with the benefits of that line.<sup>306</sup> We have sufficient information through the present filing and through Midwest ISO's Order No. 890-compliant transmission planning process to permit Midwest ISO and its stakeholders to evaluate candidate Criterion 1 MVPs for their ability to meet regional needs. Midwest ISO and its stakeholders will evaluate all candidate MVPs, including Criterion 1 MVPs, consistent with the open and transparent transmission planning process approved by the Commission.<sup>307</sup> Because Midwest ISO must implement the MVP Proposal within its Order No. 890 compliant transmission planning process that must consider alternative solutions, we find that the "overbuilding" concerns voiced by OMS and Illinois Commission are addressed.

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<sup>304</sup> Midwest ISO, Transmission Planning Business Practices Manual, Manual No. 020, at 19-20 (Nov. 20, 2010), *available at* <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

<sup>305</sup> *See generally* May 15, 2008 Order, 123 FERC ¶ 61,164.

<sup>306</sup> Midwest ISO, Transmission Planning Business Practices Manual, Manual No. 020, at 19-20 (Nov. 20, 2010), *available at* <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx> (providing that Midwest ISO will collaborate with stakeholders to evaluate whether a short-term transmission plan will be analyzed further or discarded, depending on whether it meets one of three criteria: 1) it provides the highest total value; 2) it provides the highest total plan benefit-to-cost ratio; or 3) it has a total plan value or benefit-to-cost ratio that is greater than or equal to 75 percent of the highest value or ratio for all alternative short-term plans.).

<sup>307</sup> *See, e.g.*, Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 471 ("The Commission . . . will require transmission providers to disclose to all customers and other stakeholders the basic criteria, assumptions, and data that underlie their transmission system plans."); May 15, 2008 Order, 123 FERC ¶ 61,164.

143. We have the same answer for E.ON, which argues that Criterion 1 should not require any consideration of economic or reliability factors. The MTEP process – as E.ON itself acknowledges – is sufficient to ensure that a project is subject to open, transparent analyses of costs and benefits. For this reason, it will identify projects that do not benefit the grid, and projects with greater costs than benefits. This is so whether or not Criterion 1 explicitly requires consideration of these factors.

**ii. Documented Energy Policy Mandates or Laws**

144. Parties such as Hoosier-SIPC argue on rehearing that they have no reasonable expectations of benefits from Criterion 1 MVPs because they are not subject to renewable portfolio standards or other energy policy mandates or laws.<sup>308</sup> This argument ignores the fact that supporting documented energy policy mandates or laws is not the only benefit that results from Criterion 1 MVPs. Hoosier-SIPC may not need a Criterion 1 MVP in order to ensure its own compliance with documented energy policy mandates or laws,<sup>309</sup> but it may nonetheless benefit from such a project. A new transmission facility driven by policy must bring about economic or reliability benefits in order to gain approval. As the Michigan Thumb Project demonstrates, Criterion 1 MVPs may increase the pool of capacity and energy available to the Midwest ISO market, increase the availability of lower cost generation resources, and reduce transmission congestion and market prices. By strengthening and expanding the transmission grid, Criterion 1 MVPs would also provide Hoosier-SIPC with more transmission options and facilitate intra-Midwest ISO market transactions. Regional transmission development improves and facilitates robust competitive energy markets and improves consumer access to those markets. In addition, Midwest ISO expects that most MVPs will qualify under all three MVP Criteria.<sup>310</sup> We therefore deny Hoosier-SIPC's claim that it will not benefit from Criterion 1 MVPs.

145. IPL argues that because the state of Indiana does not have a renewable portfolio standard, the MVP Order amounts to requiring Indiana utilities to pay for facilities from which its customers derive trivial, if any, benefits. IPL points to the Regional Generation Outlet Study projects described in the record, all of which were outside of Indiana. IPL also objects to the Commission's reliance on benefits such as planning reserve margins,

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<sup>308</sup> See also, e.g., Industrial Customers Request for Rehearing at 9.

<sup>309</sup> We note, however, that, as described in further detail below, Indiana recently adopted a voluntary ten percent clean energy standard.

<sup>310</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 7 (stating that Midwest ISO expects most MVPs to qualify under all three criteria).

because those things are established by state regulatory authorities.<sup>311</sup> The Regional Generation Outlet Study highlights the fact that load throughout the Midwest ISO region would benefit from transmission expansion, regardless of the generator fuel type, because increased transmission capacity tends to reduce congestion and line losses that contribute to the total amount of generation that must be held in reserve. As noted in the testimony of Mr. Lawhorn, the MVP starter projects reduced system losses by approximately 100 MW, which correlates to \$110 million of savings in deferred capacity investment.<sup>312</sup> In addition, Mr. Lawhorn noted that a decrease in congestion also leads to a decrease in adjusted production costs because market participants have greater access to less expensive generation.<sup>313</sup> Finally, we note that the most recent publicly-available information on candidate MVPs that are being considered in the MTEP process indicates that 2 of 18 candidate projects are located in Indiana and amount to \$261 million of investment.<sup>314</sup>

146. Furthermore, we note that the Governor of Indiana recently signed into law a clean energy portfolio standard.<sup>315</sup> Pursuant to this standard, utilities may participate in a program, to be established by the Indiana Commission, to obtain ten percent of their power from renewable energy resources by 2025. Accordingly, we dispute IPL's assertion that Indiana utilities will pay for facilities that result in trivial benefits for their customers. In addition to the benefits which are unrelated to meeting the clean energy standard, Indiana utilities will now also experience benefits related to meeting renewable energy policies. Also, with Indiana passing a clean energy standard, twelve of the

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<sup>311</sup> IPL Request for Rehearing at 14-17.

<sup>312</sup> See Filing Parties July 15, 2010 Filing, Lawhorn Test. at 15.

<sup>313</sup> See Filing Parties July 15, 2010 Filing, Lawhorn Test. at 13.

<sup>314</sup> See Midwest ISO, *2011 Candidate MVP Portfolio, Technical Studies Task Force, March Meeting*, at 39 (Mar. 24, 2011) available at <https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/MVP/2011%20MVP/20110324/20110324%20Candidate%20MVP%20Presentation.pdf>. See also Midwest ISO, *2010 Transmission Expansion Plan*, at App. B available at [https://www.midwestiso.org/Library/Repository/Study/MTEP/deltas1/MTEP10\\_final\\_report\\_12072010.pdf](https://www.midwestiso.org/Library/Repository/Study/MTEP/deltas1/MTEP10_final_report_12072010.pdf). The two projects are the Sullivan-Meadow Lake-Greentown 765 kV facility at \$171 million and the Reynolds- E. Winamac-Burr Oak-Hiple 345 kV facility at \$90 million.

<sup>315</sup> "Ind. governor signs bill that includes voluntary clean energy standard," *SNL Generation Markets Week* (May 17, 2011).

thirteen Midwest ISO states have now established policy initiatives supporting renewable or clean energy generation resources. Thus, Criterion 1 will provide Midwest ISO and its stakeholders the flexibility to consider mandates and laws which are almost unanimously supported by the Midwest ISO states.

147. MISO Northeast Transmission Customers and Michigan Commission argue that Michigan is situated differently from other states within Midwest ISO due to limited connectivity and should therefore be treated separately from other states.<sup>316</sup> Other parties argue that given Michigan's electrical configuration, the Michigan Thumb Project will not provide benefits outside of Michigan and that the project is an example of why the MVP Proposal fails to allocate costs on a just and reasonable basis.

148. We reject these arguments and finds that all load, whether within or outside of Michigan, will benefit from Michigan not being treated differently from other Midwest ISO members for MVP cost allocation and transmission planning purposes. First, with respect to the Michigan Thumb Project, the Commission finds that once it is operational, that project will provide benefits to loads outside of Michigan. Michigan Commission's studies indicate that the Michigan Thumb Project was sized to accommodate the region's maximum wind generating capacity (4,236 MW), which exceeds the wind capacity needed to satisfy Michigan's renewable portfolio standard (approximately 1,500 MW).<sup>317</sup> As a result, this excess energy will be added to the pool of energy available in the Midwest ISO markets and could be utilized by load-serving entities in other states. As the Michigan Thumb Project will allow Michigan to replace some portion of its imports with lower cost, Michigan-generated wind, the increase in the supply of energy available to loads outside of Michigan will result in lower prices. In addition, the reduction in Michigan's imports, combined with any exports of Michigan wind power that create counterflows, may also reduce transmission congestion, which tends to lower prices. The Michigan Thumb Project will also increase the amount of transmission capacity between Michigan and the rest of Midwest ISO, thereby providing Michigan utilities with better access to generation resources in other states and strengthening and expanding the Midwest ISO transmission grid. A robust transmission system supports and facilitates intra-Midwest ISO market transactions.

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<sup>316</sup> In two letters filed with the Commission in this proceeding, Governor Snyder of Michigan and the Michigan Chamber of Commerce urge the Commission to reconsider approval of the MVP Proposal. They allege that, if not modified, the MVP Proposal could result in Michigan's transmission rates increasing significantly with only nominal benefits accruing. *See, e.g.*, Letter from Governor Snyder at 1.

<sup>317</sup> MVP Order, 133 FERC ¶ 61,221 at P 173, n.218.

149. Moreover, because of the integrated nature of the grid, we expect Michigan load to benefit from MVPs that address the existing lack of transmission capacity within and/or around Michigan and improve Michigan's ability to import power from regions with lower prices.<sup>318</sup> According to Midwest ISO's Independent Market Monitor, average day-ahead and real-time energy prices were consistently higher in Michigan than in the rest of Midwest ISO throughout 2010, during both peak and off-peak hours.<sup>319</sup> This pattern is consistent with the Independent Market Monitor's reports for the previous years of 2007 to 2009.<sup>320</sup> To the extent that Michigan utilities import electricity,<sup>321</sup> limited transmission connections to Midwest ISO lead to high levels of congestion, resulting in higher day-

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<sup>318</sup> As discussed below, we will require Midwest ISO to conduct periodic reviews of MVPs, thereby allowing Midwest ISO and its stakeholders to better understand the costs and benefits resulting from MVPs, including their distribution across the Midwest ISO region.

<sup>319</sup> Midwest ISO Independent Market Monitor, Potomac Economics, *2010 State of the Market Report Midwest ISO*, at 31-32, 65-68, 89-92 (May 2011), available at [http://www.potomaceconomics.com/uploads/midwest\\_presentations/2010\\_State\\_of\\_the\\_Market\\_Presentation\\_-\\_Final.pdf](http://www.potomaceconomics.com/uploads/midwest_presentations/2010_State_of_the_Market_Presentation_-_Final.pdf). Real-time energy prices at the Michigan Hub exceeded \$150 per MWh for nearly twice as many hours in 2010 than the Cinergy Hub, Minnesota Hub, or Wisconsin-Upper Michigan System Area. *Id.* at 37-38.

<sup>320</sup> Midwest ISO Independent Market Monitor, Potomac Economics, *2007 State of the Market Report for the Midwest ISO* at 32; *2008 State of the Market Report for the Midwest ISO* at 34; *2009 State of the Market Report for the Midwest ISO* at 30. These reports are available at <https://www.midwestiso.org/Library/Pages/ManagedFileSet.aspx?SetId=623>.

<sup>321</sup> Historical data (from FERC Form 714) indicate that, on an annual basis, Michigan imports between 9 and 15 percent of its internal consumption.



ahead and real-time energy prices.<sup>322</sup> Michigan customers also tend to pay higher prices for the generation components of their retail rates than customers in other regions.<sup>323</sup> Further, Michigan has intra-state binding transmission constraints that preclude it from importing regulating reserves and for which Midwest ISO requires in-state regulation to be in place.<sup>324</sup> According to Midwest ISO's monthly market reports for 2010, average regulating reserve prices in Michigan's Lower Peninsula were significantly higher (more than 13 percent) than the average prices for the entire Midwest ISO region in both the day-ahead and real-time markets during 2010. This is because Reserve Zone 5, which is

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<sup>322</sup> Midwest ISO Independent Market Monitor, Potomac Economics, *2010 State of the Market Report Midwest ISO*, at 31, 37 (May 2011), available at [http://www.potomaceconomics.com/uploads/midwest\\_presentations/2010\\_State\\_of\\_the\\_Market\\_Presentation\\_-\\_Final.pdf](http://www.potomaceconomics.com/uploads/midwest_presentations/2010_State_of_the_Market_Presentation_-_Final.pdf). According to the Independent Market Monitor, congestion into Michigan persisted for nearly all of 2010 due to import constraints on the Southwestern Michigan interface and, during two quarters, temporary transmission outages. *Id.* at 184.

<sup>323</sup> We note that, based on historical, disaggregated data for 2009 regarding the generation, transmission, and distribution components of retail rates, the Electric Power Projections of the U.S. Energy Information Administration's Annual Energy Outlook 2011 indicate that customers in the Reliability First-Michigan region (including Michigan's Lower Peninsula) paid 6.73¢ per kWh for the generation component of their retail rates, whereas customers in the Reliability First-West region (including Indiana, Ohio, and parts of Wisconsin), the SERC-Gateway region (including Illinois and Missouri), the Midwest Reliability Organization (MRO)-East region (including Michigan's Upper Peninsula and most of Wisconsin), and the MRO-West region (including North Dakota, South Dakota, Nebraska, Minnesota, Iowa, and parts of Wisconsin) paid 5.44, 5.05, 6.19, and 4.22¢ per kWh, respectively. U.S. Energy Information Administration, *Annual Energy Outlook 2011, Electric Power Sector, Electric Power Projections for EMM Region*, available at <http://www.eia.gov/oiaf/aeo/tablebrowser/#release=AEO2011&subject=6-AEO2011&table=62-AEO2011&region=3-4&cases=ref2011-d020911a> (accessed on Jun. 16, 2011).

<sup>324</sup> In 2009, binding transmission constraints occurred in 70 percent of all hours with respect to regulating reserves. See Midwest ISO May 28, 2010 Filing, Docket No. ER10-1361-000.

composed primarily of much of the Lower Peninsula, had the highest average regulating reserves prices among all of Midwest ISO's reserve zones.<sup>325</sup> A stronger, more integrated regional transmission system would allow Michigan utilities to procure energy and operating reserves from a broader set of resources. With regard to the 2011 MVP portfolio, the Midwest ISO Technical Studies Task Force reported that the eastern region of Midwest ISO, of which Michigan is a significant part, will experience the greatest reduction in production costs among Midwest ISO's three planning regions.<sup>326</sup> In addition, a strong external transmission system benefits utilities in Michigan that would otherwise be adversely impacted by disturbances in areas outside of their footprint. A notable example of this is the August 14, 2003 blackout. While the blackout began due to weak transmission in Ohio, approximately 2.3 million homes and businesses in Michigan had been affected by the time the event had been resolved.<sup>327</sup>

150. MISO Northeast Transmission Customers request to be treated as a separate and unique planning and cost allocation sub-region of Midwest ISO.<sup>328</sup> As described by them, this sub-region would participate only in planning and cost responsibility for the transmission system developed within Michigan to support in-state energy market development. We reject this idea because it is inconsistent with Midwest ISO's operation

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<sup>325</sup> During 2010, average regulating reserve prices in Reserve Zone 5 were \$14.62 and \$13.87 per MWh in the real-time and day-ahead markets, respectively, whereas average prices for the entire Midwest ISO region were \$12.93 and \$12.19 per MWh, respectively. Midwest ISO, January Monthly Report at 16 (Feb. 23, 2010), February Monthly Report at 16 (Mar. 22, 2010), March Monthly Report at 17 (Apr. 23, 2010), April Monthly Report at 21 (May 24, 2010), May Monthly Report at 20 (Jun. 24, 2010), June Monthly Report at 21 (Jul. 26, 2010), July Monthly Report at 21 (Aug. 24, 2010), August Monthly Report at 22 (Sep. 27, 2010), September Monthly Report at 21 (Oct. 27, 2010), October Monthly Report at 21 (Dec. 1, 2010), November Monthly Report at 21 (Dec. 28, 2010), December Monthly Report at 22 (Jan. 28, 2010), *available at* <http://www.midwestiso.org/Library/Pages/Library.aspx>.

<sup>326</sup> Midwest ISO, Technical Studies Task Force, *2011 Candidate MVP Portfolio*, at 55-59 (Apr. 2011) *available at* <https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/MVP/2011%20MVP/20110425/20110425%20MVP%20Presentation.pdf>.

<sup>327</sup> See U.S.-Canada Power System Outage Task Force, *Final Report on the August 14, 2003 Blackout in the United States and Canada: Causes and Recommendations*, at 45 (Apr. 2004) *available at* <https://reports.energy.gov/>.

<sup>328</sup> MISO Northeast Transmission Customers Request for Rehearing at 11, 27.

and planning. Previously, the Commission rejected Midwest ISO's Market Coordination Service (Market Service) proposal that, similar to MISO Northeast Transmission Customers' proposal, would have allowed entities to integrate into Midwest ISO's Day 2 RTO markets without assuming core Day 1 RTO responsibilities such as regional transmission planning and cost allocation. The Commission found that: "Market Service could threaten Midwest ISO's scope and configuration by providing members that currently enjoy the benefits of RTO membership an opportunity to leave Midwest ISO and keep a significant portion of those benefits . . . while escaping a significant portion of the costs associated with those benefits."<sup>329</sup> Thus, if Michigan did not participate in Midwest ISO's regional transmission planning and cost allocation, it could forego not only the benefits of MVPs, but also other benefits of RTO membership. If Michigan were to be treated as a separate transmission planning and cost allocation sub-region, Michigan entities could forego other significant operational benefits of membership in Midwest ISO.

### iii. Delegation of Authority

151. In the MVP Order, the Commission rejected arguments that the specific requirements of Criterion 1 are too broad or too vague and declined to address parties' request to clarify what constitutes compliance with documented energy policy mandates or laws or regulatory requirements.<sup>330</sup> The Commission recognized that Filing Parties must ensure that transmission expansion projects undertaken to satisfy a diverse array of documented energy policy mandates or laws or regulatory requirements from various jurisdictions may qualify under Criterion 1.<sup>331</sup> The Commission also disagreed with arguments that Filing Parties are attempting to make determinations regarding how states or load-serving entities should meet federal or state public policy requirements.<sup>332</sup> To the extent protestors suggested that Midwest ISO and the other Filing Parties will be putting themselves in the position of state commissions, the Commission stated its expectation that state regulators and other stakeholders will be actively involved in identification of MVPs and that Midwest ISO will receive input from, and act in conjunction with, the state commissions.<sup>333</sup>

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<sup>329</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 126 FERC ¶ 61,139, at P 67.

<sup>330</sup> MVP Order, 133 FERC ¶ 61,221 at P 209.

<sup>331</sup> MVP Order, 133 FERC ¶ 61,221 at P 209.

<sup>332</sup> MVP Order, 133 FERC ¶ 61,221 at P 212.

<sup>333</sup> MVP Order, 133 FERC ¶ 61,221 at P 212.

152. In their requests for rehearing, parties including Exelon, IMEA, and MISO Northeast Transmission Customers argue that, in deferring resolution of the details of the definition of the MVP Criteria and their application to the stakeholder process, the Commission has abdicated its regulatory responsibility and improperly delegated its statutory authority.<sup>334</sup> MISO Northeast Transmission Customers assert that, by approving Tariff sheets that do not adequately define the public policy standard of Criterion 1, the Commission failed to properly apply its “rule of reason” regarding the inclusion in a tariff of classifications, practices or rules affecting a rate, charge, service or practice. Midwest TDUs request clarification that Criterion 1 should be interpreted to encompass FPA section 217(b)(4)’s directive for planning to meet the reasonable needs of load-serving entities and to enable them to secure long-term rights for their existing and planned long-term power supply arrangements. They contend that the Commission may not delegate to Midwest ISO or its stakeholders the fulfillment of congressional requirements of the Commission.

153. Parties cite *U.S. Telecom*<sup>335</sup> to support their arguments that the Commission cannot subdelegate its authority to outside entities, private or sovereign, to determine what is just and reasonable absent a showing of congressional authorization.<sup>336</sup> There, the Federal Communications Commission (FCC) subdelegated to state commissions its statutory authority to determine which network elements, such as copper wire loops for telephone service, must be unbundled (i.e., made available by incumbent telecommunications carriers to other competitive firms). The FCC gave the states virtually unlimited discretion to define certain key concepts. In addition, although the FCC provided that a party aggrieved by a state commission decision could seek a declaratory ruling from the FCC, the agency did not provide any assurance of when, or even whether, the FCC might respond.<sup>337</sup>

154. We find that the facts of *U.S. Telecom* are distinguishable from this case. As noted in the MVP Order and explained by Midwest ISO, Criterion 1 establishes a category of transmission projects that will be undertaken in support of a diverse array of documented energy policy mandates or laws.<sup>338</sup> The Commission exercised its statutory

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<sup>334</sup> See, e.g., IMEA Request for Rehearing at 6-11.

<sup>335</sup> *U.S. Telecom*, 359 F.3d at 565-66.

<sup>336</sup> See IMEA Request for Rehearing at 11.

<sup>337</sup> *U.S. Telecom*, 359 F.3d at 565, 567 (“[T]he [agency] lets the states make crucial decisions . . . with oversight neither timely nor assured.”).

<sup>338</sup> MVP Order, 133 FERC ¶ 61,221 at P 209.

authority in determining that Criterion 1 of Filing Parties' proposal was just and reasonable. The Commission deferred only the *application* of Criterion 1, in its finding that the Midwest ISO stakeholder process is the best forum for making an initial assessment of what mandates or laws Criterion 1 MVPs might support. The Commission retains responsibility, through its ongoing oversight of the Midwest ISO Tariff, for ensuring that the MVP Proposal continues to provide for just and reasonable rates. The Commission will remain available to facilitate dispute resolution or to hear FPA section 206 complaints as to how that process is carried out.

155. Parties further contend that Midwest ISO and its stakeholders will have unfettered discretion to decide what constitutes a public policy-driven project, or what projects may indirectly further public policy.<sup>339</sup> We disagree with these assessments. Criterion 1 states that an MVP must enable the transmission system to “reliably and economically deliver energy in support of documented energy policy mandates or laws that have been enacted or adopted through state or federal legislation or regulatory requirement that directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation.”<sup>340</sup> Thus the language of Criterion 1 places clear limits on public policy to “documented” energy policy mandates or laws that have been “enacted or adopted” through state or federal legislation or regulation.<sup>341</sup> Moreover, while this language may describe a diverse array of such documented energy policy mandates, laws, or regulatory requirements from various jurisdictions, it is hardly boundless; the policies in question must “directly or indirectly govern the minimum or maximum amount of energy that can be generated by specific types of generation.” Accordingly, IMEA’s argument that projects could qualify for MVP cost allocation on the basis that they might someday support a policy goal is unsupported. As the Commission found in the MVP Order, given the diverse array of such documented energy policy mandates, laws, or regulatory requirements from various jurisdictions, the boundaries that Filing Parties place on the notion of “documented energy policy mandates or laws” are appropriately broadly drawn in the Tariff. Filing Parties could not have provided more specificity without limiting the flexibility required by Midwest ISO and all of its stakeholders, including state commissions.

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<sup>339</sup> See, e.g., IMEA Request for Rehearing at 7 (“[P]rojects could qualify merely on the supposition that they will meet future, as yet-to-be-defined public policy mandates.”).

<sup>340</sup> Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451A.

<sup>341</sup> Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451A.

156. In order to preserve this flexibility, we will not specify what public policies must be considered under Criterion 1 as we have, as discussed above, found that the Midwest ISO stakeholder process is the best forum for making an initial assessment of what mandates or laws Criterion 1 MVPs might support. We acknowledge that section 217(b)(4) is a federal law. We decline to specify here, however, that this or any other federal law must be considered under Criterion 1.

157. Parties further suggest that participation in the “majority-rules” stakeholder process to designate MVPs will not be meaningful. They assert that even legitimate concerns will not be good cause for complaint to the Commission, since any majority rule concerning the application of the vague Tariff language of Criterion 1, which the Commission has found to be just and reasonable, will have been “perfectly fitted” under the terms of the Tariff language.<sup>342</sup> As explained above, we disagree that the language of Criterion 1 is unreasonably vague. Criterion 1 provides enough specificity that we expect to be able to determine whether or not Midwest ISO properly applied it. The suggestion that the outcome of any complaint to the Commission concerning the designation of MVPs is a foregone conclusion is also speculative and unsupported. As the Commission explained in the MVP Order, if the stakeholder process does not satisfy a stakeholder’s concerns, it may seek recourse through the Midwest ISO dispute resolution process, pursue alternative dispute resolution through the Commission, or file a complaint pursuant to section 206 of the FPA.<sup>343</sup>

**f. Criteria 2 and 3**

158. IMEA challenges Criterion 2 on the basis that the minimum 1:1 benefit-to-cost ratio embedded in that criterion does not ensure that an MVP will provide a net benefit to ratepayers. For a project to qualify under Criterion 2, the total benefit-to-cost ratio must be 1:1 or higher; thus, MVPs qualifying under Criterion 2 will, at worst, provide benefits even with costs. Further, as noted above, the calculation of benefits omits certain elements because they are difficult to quantify, and therefore is conservative and underestimates the level of benefits.<sup>344</sup> IMEA also argues that recent experience with cost overruns demonstrates that it is unrealistic to assume that this ratio will continue through the 20-year period for which benefits are measured. IMEA’s argument fails to connect the experience it cites with specifics of the MVP Proposal, and is therefore speculative.

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<sup>342</sup> See, e.g., IMEA Request for Rehearing at 9.

<sup>343</sup> MVP Order, 133 FERC ¶ 61,221 at P 203, 226.

<sup>344</sup> See *supra* P 134.

159. In response to MISO Northeast Transmission Customers, we find no error in the Commission's finding that the MVP Criteria 2 and 3 processes will not subsume the Market Efficiency Project and Baseline Reliability Project cost allocations that the Commission approved in earlier proceedings. There could be circumstances in which a project that fails to meet the MVP minimum project cost (\$20 million) could nonetheless receive MVP cost allocation because the project's cost exceeds five percent of the transmission owner's net plant. However, we do not expect such a circumstance to occur often enough that the MVP Criteria 2 and 3 processes would subsume the Market Efficiency Project and Baseline Reliability Project cost allocations. An MVP must have a minimum cost threshold of \$20 million or five percent of the constructing transmission owner's contemporaneously reported net transmission plant, whereas a Market Efficiency Project or Baseline Reliability Project need only cost \$5 million or more. An MVP may be lower voltage than a Market Efficiency Project or a Baseline Reliability Project (100 kV versus 345 kV, respectively), but the higher cost threshold ensures that it will be a relatively large project.<sup>345</sup> We therefore expect very few Baseline Reliability Projects to qualify as MVPs; if they do, they will be reclassified as such to better reflect their relationship to the transmission system. Regarding Market Efficiency Projects, this category is comparatively new, and just one such project has been approved to date. But we find it significant that a Market Efficiency Project need provide only one type of economic benefit in order to qualify for some regional cost allocation, while an MVP must provide more than one such benefit. MVPs therefore are subject to a stricter standard for cost sharing than Market Efficiency Projects.

160. In response to Illinois Commission's suggestions that load could be harmed by a Criterion 2 MVP, we specifically note that an increase in LMPs resulting from a Criterion 2 MVP would be indicative of an area with lower amounts of load, cheap surplus generation, and insufficient export capability separating such area from the rest of the market. The MVP at issue would improve the economic efficiency of the market by allowing system-wide LMPs to converge. We further find that Illinois Commission's concerns fail to appreciate that specific LMPs are not static and change over time due to a multitude of changes in the topology of the regional transmission system. As stated elsewhere in this order, the transmission grid is integrated and the benefits associated with investment in transmission will accrue over time.

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<sup>345</sup> And indeed, our own review of historical data indicates that two-thirds of existing Baseline Reliability Projects would not have qualified for MVP cost allocation; there are no studies to indicate whether the remaining third would have satisfied Criterion 3. MVP Order, 133 FERC ¶ 61,221 at 263.

161. Finally, with regard to IPL's contention that the definition of "Transmission Issue" is unreasonably broad, we find that the definition is properly narrowed by the context of Criterion 3, as well as the transmission planning process approved by the Commission. In its rehearing request, IPL argues that the definition should be transparent and based on entirely objective criteria.<sup>346</sup> Midwest ISO's Commission-approved, Order No. 890-compliant, open and transparent MTEP process mandates that all new transmission be approved in accordance with its procedures. Part of this process is a review that requires Midwest ISO to post all prospective projects on its Open-Access Same-Time Information System (OASIS) and to allow parties to challenge the details associated with the proposed project. We find that this provides sufficient transparency. Additionally, we note that in order to meet Criterion 3, a project must address a transmission issue associated with a projected NERC violation and an economic transmission issue. Thus, the term "Transmission Issue" is further narrowed to one that requires both an economic impact and a close association with resolution of a serious reliability violation.

**g. Exclusion Criteria**

162. In addition to the MVP Criteria, the MVP Proposal established additional requirements for projects to qualify for MVP cost allocation. In addition to meeting one of the MVP Criteria, a candidate MVP must also be included in the transmission planning process, cannot be a network transmission facility constructed only because of an interconnection or transmission service request, must have a total cost that is greater than or equal to the lesser of \$20 million or five percent of the constructing transmission owner's contemporaneously reported net transmission plant, and must include facilities operating at or above 100 kV.<sup>347</sup> The Commission accepted these additional requirements for MVPs as part of the MVP Proposal. On rehearing, several parties challenge the Exclusion Criteria.

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<sup>346</sup> IPL Request for Rehearing at 35. IPL also asserts that the Commission failed to address this issue raised in its protest. But IPL fails to reiterate its full argument on rehearing or even provide a citation to the specific argument in its protest. FPA section 313(a) requires parties seeking rehearing to "set forth specifically the ground or grounds upon which such application is based." 16 U.S.C. § 825l(a).

<sup>347</sup> MVP Order, 133 FERC ¶ 61,221 at P 30-31. These requirements are referred to as the Exclusion Criteria because failing to meet one of them eliminates consideration of the project as an MVP. Further, any Network Upgrade cost associated with constructing an underground or underwater transmission line above and beyond the cost of a feasible alternative overhead transmission line that provides comparable regional benefits are excluded from MVP cost allocation. Filing Parties July 15, 2010 Filing, Transmittal Letter at 22.



163. We reject challenges to the requirement that transmission facilities operate at or above 100 kV. Parties assert that this threshold is too low and that the Commission failed to take into account evidence that facilities at that voltage level do not provide regional benefits. These parties also argue that certain studies indicate that the majority of projects rated at 345 kV and below only accrue in local or adjacent pricing zones.<sup>348</sup> We deny rehearing and affirm the 100 kV threshold for MVPs. As the Commission noted, Filing Parties explained that the backbone transmission system of the Midwest ISO footprint varies.<sup>349</sup> In addition, 100 kV is the minimum size transmission facility over which Midwest ISO generally exercises functional control.<sup>350</sup> Increasing the minimum threshold beyond 100 kV could undermine transmission development in areas with transmission facilities at lower voltages, or undermine development of projects where operation at a lower voltage represents an appropriate solution. Further, the studies relied upon by MISO Northeast Transmission Customers focus solely on voltage threshold without regard to any additional criteria or qualifications that projects have to meet under the MVP Proposal. As the Commission has explained, a single component of the MVP Criteria and the Exclusion Criteria cannot be viewed in isolation. The voltage threshold is only one element that a project must satisfy in order to obtain MVP status. Taken together, these requirements ensure that any MVP will provide benefits of sufficient magnitude and scope.

164. Hoosier-SIPC claim that, in accepting the 100 kV voltage threshold for MVPs, the Commission failed to provide a reasoned explanation for departing from existing precedent. Hoosier-SIPC note that in the RECB II proceeding, the Commission noted Midwest ISO's statement that "[Midwest ISO] does not presume that every customer within its large service territory will benefit equally from all transmission expansion and, therefore, instead it requires a beneficiary analysis to determine the relative project benefits to customers."<sup>351</sup> Hoosier-SIPC also note that the Commission has observed that

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<sup>348</sup> MISO Northeast Transmission Customers Request for Rehearing at 12 (citing MISO Northeast Transmission Customers September 10, 2010 Protest and Request for Hearing, Docket No. ER10-1791-000, Dotterweich Aff. at 23).

<sup>349</sup> MVP Order, 133 FERC ¶ 61,221 at P 218-219.

<sup>350</sup> MVP Order, 133 FERC ¶ 61,221 at P 218.

<sup>351</sup> Hoosier-SIPC Request for Rehearing at 16-17 (citing, *e.g.*, RECB II Order, 118 FERC ¶ 61,209 at P 6, 48).

“facilities rated below 345 kV would not see the same system-wide effects as higher voltage facilities.”<sup>352</sup> Hoosier-SIPC allege that the Commission now presumes that every customer within Midwest ISO benefits significantly from all transmission expansion, even from facilities rated no higher than 100 kV. Hoosier-SIPC claim that, in light of the Seventh Circuit’s rejection of postage stamp pricing for facilities at 500 kV and above in PJM, the conclusion that all customers within Midwest ISO benefit from 100 kV facilities cannot be reconciled with the Commission’s previous acknowledgment that postage stamp pricing is less appropriate in Midwest ISO than in PJM due to Midwest ISO’s lack of history with tight power pools and regional cost sharing.<sup>353</sup>

165. We reject Hoosier-SIPC’s arguments that the 100 kV threshold is inconsistent with Commission precedent. Contrary to the allegation that the Commission is “ready to presume” that all customers within Midwest ISO will benefit from MVPs, in evaluating the 100 kV threshold proposed by Midwest ISO, the Commission considered evidence regarding the indicative starter projects and correctly concluded that the MVP Criteria and Exclusion Criteria will identify projects that will provide regional benefits to Midwest ISO.

166. We disagree with Hoosier-SIPC that the discussion of benefits from Baseline Reliability Projects rated below 345 kV in the February 3, 2006 Order constitutes Commission policy so broad that the Commission’s holding in the MVP Order is a departure. In that case, the Commission evaluated Midwest ISO’s cost allocation proposal for Baseline Reliability Projects, which are a defined class of new transmission facilities, and found it reasonable that Baseline Reliability Projects rated below 345 kV would not see the same system-wide regional benefits as higher-voltage facilities. The Commission’s finding was limited to that specific class of transmission projects, and therefore does not support Hoosier-SIPC’s effort to generalize it to all new transmission facilities.<sup>354</sup> But in any event, as noted above, the Commission evaluated evidence in support of regional cost allocation for projects 100 kV and above, and explained its reasons for approving the MVP Proposal: “In particular, we agree with Filing Parties that the ‘backbone’ transmission system of the Midwest ISO footprint varies and, in some areas, the backbone is 161 kV. Thus, a change of the voltage threshold from 100 kV to 230 kV or above would undermine any regional development in those areas and could

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<sup>352</sup> Hoosier-SIPC Request for Rehearing at 17 (citing February 3, 2006 Order, 114 FERC ¶ 61,106 at P 44).

<sup>353</sup> Hoosier-SIPC Request for Rehearing at 17 (citing January 31, 2008 Order, 122 FERC ¶ 61,081 at P 102).

<sup>354</sup> See, e.g., February 3, 2006 Order, 114 FERC ¶ 61,106 at P 44.

produce unduly discriminatory results.”<sup>355</sup> But as noted in the MVP Order, voltage determines only a project’s materiality; it does not determine that a project will qualify for MVP cost allocation. The requirements of the MVP Proposal, such as the \$20 million or five percent of the constructing transmission owner’s net transmission plant and the MVP Criteria, are more stringent than those of RECB and reduce the possibility that projects without regional benefits will qualify for MVP cost allocation. As such, while it may be more common for lower voltage facilities to provide only local benefits, this simply means that the subset of lower voltage facilities that do provide regional benefits, and thus qualify for MVP cost allocation, will be smaller. By focusing on one component of the proposal, Hoosier-SIPC fails to take into account the other aspects of the MVP Proposal that, when taken together, ensure that MVP costs will be allocated in a manner roughly commensurate with the benefits provided or burdens imposed.

167. We likewise reject the argument that the lack of history of tight power pool operations or regional cost sharing in Midwest ISO undermines the MVP Order. As the Commission noted in the order cited by Hoosier-SIPC, RECB II represented “an improvement over the status quo and a *reasonable first step* toward regional pricing for transmission upgrades.”<sup>356</sup> The MVP Proposal likewise represents another step forward in the evolution of Midwest ISO. Just as PJM accumulated operational history, so will Midwest ISO. We do not agree that because Midwest ISO may lack PJM’s traditions it should be foreclosed from implementing just and reasonable cost allocation alternatives.

168. Petitioners also challenge the requirement that, to qualify for MVP cost allocation, the total capital cost of an MVP must be greater than or equal to the lesser of \$20 million or five percent of the constructing transmission owner’s contemporaneously reported net transmission plant. Petitioners argue that this cost threshold is too low to be meaningful and that it undermines existing transmission project classifications under RECB. We disagree. First, the total capital cost threshold requirement ensures that a proposed MVP will meet a minimum materiality threshold while enabling smaller transmission projects to be eligible for MVP cost allocation. As a component of the MVP Proposal, this requirement provides a minimum threshold that will allow consideration of smaller projects that may provide regional benefits even though the capital cost expenditure is not as large. This threshold strikes an appropriate balance and ensures that smaller transmission systems are not unduly discriminated against.

169. Second, we reject claims that this component of the MVP Proposal will undermine existing transmission project classifications under RECB. With respect to Market

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<sup>355</sup> MVP Order, 133 FERC ¶ 61,221 at P 218.

<sup>356</sup> January 31, 2008 Order, 122 FERC ¶ 61,081 at P 100 (emphasis in original).

Efficiency Projects, the cost threshold is \$5 million,<sup>357</sup> compared to \$20 million (or five percent of the constructing transmission owner's net transmission plant) for a potential MVP that must also provide benefits over multiple pricing zones under Criteria 2 and 3. Baseline Reliability Projects are subject to the same \$5 million cost threshold, but are not required to provide economic benefits in excess of the annual revenue requirements of the project over twenty years as MVPs must under Criterion 3. In addition, as the Commission noted in the MVP Order, of all of the Baseline Reliability Projects approved in MTEP06 through MTEP09, or pending approval in MTEP10, only 34 percent have had a total cost exceeding \$20 million.<sup>358</sup> Thus, the concerns regarding the total capital cost threshold being inconsistent or in conflict with RECB classifications are unfounded. Finally, this requirement is not the only one that potential MVPs must meet in order to qualify for MVP cost allocation. The Exclusion Criteria and MVP Criteria are inextricably linked, and focusing on one requirement fails to take into account the MVP Proposal as an integrated package that has been found to be just and reasonable.

#### **h. Portfolio Approach**

170. Several parties raise specific issues regarding Midwest ISO's assembly of MVPs into a portfolio.

171. IPL argues that the portfolio approach is based on a fiction that the benefits calculus will somehow change if projects are considered and approved together. IPL argues that by adopting this perspective, Midwest ISO erroneously treats the portfolio approach as functionally equivalent to the DFAX methodology employed by PJM. IPL explains that it is inappropriate to treat the portfolio approach as functionally equivalent to a powerflow-based benefits test.<sup>359</sup> We reject IPL's argument: Midwest ISO's use of a portfolio approach does not approximate the results of PJM's DFAX methodology.<sup>360</sup>

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<sup>357</sup> Midwest ISO October 18, 2010 Answer at 33.

<sup>358</sup> MVP Order, 133 FERC ¶ 61,221 at P 260.

<sup>359</sup> IPL Request for Rehearing at 17-19.

<sup>360</sup> For recovery of the costs of investment in new transmission facilities that operate below a 500 kV threshold, PJM uses a methodology to calculate distribution factors, represented as decimal values or percentages, which express the portions of a transfer of energy from a defined source to a defined sink that will flow across a particular transmission facility or group of transmission facilities. These distribution factors represent a measure of the effect of the load of each transmission zone or merchant transmission facility on the transmission constraint that requires the facility.

Midwest ISO's assembly of MVPs into a portfolio is entirely consistent with its existing transmission planning process and simply ensures that MVPs will be developed throughout the Midwest ISO region.

172. MISO Northeast Transmission Customers argue that the portfolio approach is inconsistent with Commission orders on transmission rate incentives in that the portfolio approach eliminates the ability to determine whether each project on its own has demonstrated sufficient benefits to justify socialized cost allocation.<sup>361</sup> This argument improperly conflates two different types of transmission rate proposals. Here, the Commission addressed a Midwest ISO proposal for load in that region to bear the costs of facilities which are determined to provide commensurate regional benefits. In contrast, in transmission rate incentives cases, the Commission evaluates requests by individual public utilities for specific incentives for infrastructure proposals that meet specific requirements under section 219 of the FPA.<sup>362</sup>

**i. General Support by State Authorities and Participants  
Across the Region**

173. Several parties challenge the Commission's ability to consider general support for a transmission cost allocation proposal when considering whether a proposal is just and reasonable. In Order No. 890, the Commission announced a new balancing test for judging the reasonableness of a cost allocation proposal. In that test, the Commission weighs whether the method provides incentives to build transmission, whether the method fairly assigns costs among participants, and whether there is general support in the region for the proposal.<sup>363</sup> The Commission explained that support for cost allocation proposals is important because there is a broad range of possible cost allocation solutions. Regional solutions that garner stakeholder support are preferable because states may be reluctant to site regional transmission projects if they believe the costs are not being allocated fairly, and participants are more apt to support new transmission investment where costs are allocated fairly.<sup>364</sup> Accordingly, the Commission properly considered

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<sup>361</sup> Illinois Commission also argues that the Commission has determined that a utility must make a case-by-case showing before the Commission will authorize transmission rate incentives pursuant to Order No. 679. Illinois Commission Request for Rehearing at 43.

<sup>362</sup> 16 U.S.C. § 824s (2006).

<sup>363</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 559.

<sup>364</sup> Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 560.

support for the MVP Proposal by state authorities and Midwest ISO participants.<sup>365</sup> We reject challenges by AMP and Hoosier-SIPC to the Commission's consideration of general support in finding the MVP Proposal just and reasonable. These challenges are collateral attacks on Order No. 890 that established the three-factor test. As the Commission has stated, “[c]ollateral attacks on final orders and relitigation of applicable precedent . . . thwart the finality and repose that are essential to administrative efficiency, and are therefore strongly discouraged.”<sup>366</sup>

174. Contrary to the assertions of Hoosier-SIPC, Illinois Commission, and OMS, in judging whether there is general support for a cost allocation proposal, the Commission is not requiring unanimity or near unanimity among all of the participants and state authorities in the region. Rather, in Order No. 890, the Commission acknowledged that it would apply this balancing test “when considering a dispute over cost allocation . . . .” By definition, when there is a dispute over cost allocation, there is not unanimity of opinion. In addition, we note that general support, not consensus, is the touchstone of Order No. 890. Midwest ISO incorporates a diverse group of 14 states, 36 transmission owners, and many other members and membership interests.<sup>367</sup> For an issue as complicated and controversial as transmission expansion cost allocation, even a general expression of support is not assured. As noted by Midwest ISO, “as is typical of the products of stakeholder discussions, [the MVP Proposal] necessarily result[ed] from a balancing of interests and compromises,”<sup>368</sup> and the record here shows a substantial

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<sup>365</sup> We note that the Commission has applied this principle when evaluating other cost allocation proposals. *See, e.g.*, January 31, 2008 Order, 122 FERC ¶ 61,081 at P 52 (“Although not the only deciding factor, the Commission considers the opinions of various stakeholders, states and other affected parties in reaching its conclusions.”).

<sup>366</sup> *NSTAR Electric Company v. ISO New England Inc.*, 120 FERC ¶ 61,261, at P 33 (2007); *see Pacific Gas & Electric Co.*, 121 FERC ¶ 61,065, at P 38-40 (2007) (citing *Alamito Co.*, 41 FERC ¶ 61,312, at 61,289 (1987), *order denying reconsideration and granting request for clarification*, 43 FERC ¶ 61,274 (1988)); *see also Pacific Gas & Elec. Co. v. FERC*, 533 F.3d 820, 825 (D.C. Cir. 2008) (holding that a late challenge to a requirement first announced in a Commission rulemaking is a “time-barred collateral attack”).

<sup>367</sup> *See* Midwest ISO, *Midwest ISO Members By Sector (April 2011)*, available at <https://www.midwestiso.org/Library/Repository/Communication%20Material/Corporate/Current%20Members%20by%20Sector.pdf> (listing 27 independent power producers and 17 municipalities, cooperatives and other transmission dependent utilities).

<sup>368</sup> Filing Parties July 15, 2010 Filing, Transmittal Letter at 11.

agreement among participants and state authorities<sup>369</sup> in the Midwest ISO region over the broad outlines of the cost allocation proposal.

175. As discussed in the MVP Order, this agreement among stakeholders resulted from a thorough, in-depth, and rigorous stakeholder process. Two primary groups worked on the transmission cost allocation issue simultaneously: OMS CARP working group and the Midwest ISO RECB Task Force.<sup>370</sup> Between July 9, 2009, and July 15, 2010, the date the MVP Proposal was filed at the Commission, RECB Task Force met 20 times and OMS CARP met 14 times to discuss, evaluate and provide feedback on potential long-term cost allocation solutions.<sup>371</sup> As a result of these processes, three competing proposals were developed: 1) a Midwest ISO Transmission Owners proposal which allocated all qualifying transmission expansion costs to load, on a usage basis; 2) an OMS CARP proposal which was loosely similar to the Midwest ISO Transmission Owners proposal except for the allocation of 20 percent of qualifying costs to all generators and the use of a MW-based charge instead of a MWh-based charge; and 3) a Midwest ISO proposal consisting of elements of an injection-withdrawal methodology. The Midwest ISO proposal also allocated a portion of costs for transmission expansion on a zonal basis.

176. In response to the arguments raised by OMS on rehearing, we also point to the fact that there were numerous votes taken throughout the stakeholder processes at both the RECB Task Force and OMS CARP. One of the key votes taken at OMS CARP occurred during its April 22-23, 2010, meeting, when OMS CARP voted to support its developed proposal: an exclusion model that relates solely to qualifying projects. The vote indicated OMS CARP's preference that the costs for qualifying new transmission projects be allocated on a 100 percent postage-stamp basis with 80 percent of costs going to load and 20 percent of costs going to generators. The OMS CARP proposal had

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<sup>369</sup> We acknowledge that some parties have interpreted the MVP Order as erroneously concluding that all of the Midwest ISO states support the MVP Proposal. OMS clarified this matter in its request for rehearing, stating: "OMS notes that clearly there was not a consensus of all OMS states on the MVP issue, however, nine of the OMS states did support the Midwest ISO's MVP Proposal as it was filed...." OMS Request for Rehearing at 8. We conclude that an almost seventy percent vote in favor constitutes "general support." Moreover, only one state commission, Illinois Commission, of those four states that first voted in opposition to the proposal, contests our finding of general support among the Midwest ISO state authorities.

<sup>370</sup> MVP Order, 133 FERC ¶ 61,221 at P 18.

<sup>371</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 18.

support from 10 of the 13 voting OMS states. While certain components of that proposal were not included in the MVP Proposal, we note that the allocation of costs on a postage stamp basis was indeed supported by OMS CARP at that meeting.<sup>372</sup> This is consistent with OMS's initial comments, which stated that "OMS generally supports the proposed revisions that the Midwest ISO filed at [the Commission] in Docket No. ER10-1791-000."<sup>373</sup> It was not unreasonable for the Commission to take the statement by OMS declaring "general support" at face value and thereby conclude that OMS "generally supports" the MVP Proposal.

177. As the stakeholder process wound down and the filing deadline approached, eventually the sector-weighted Midwest ISO Advisory Committee voted on each of the three proposals at its May 19, 2010 meeting.<sup>374</sup> The only proposal that passed the highest advisory stakeholder group was the Midwest ISO Transmission Owners proposal.<sup>375</sup> We note that 77.5 percent of the Advisory Committee members who expressly voted either for or against the Midwest ISO Transmission Owners proposal supported it.

178. Even if we assume for the sake of argument that the proposal voted by the Advisory Committee was dramatically different from the eventual MVP proposal, the desire of the stakeholders to arrive at a consensus approach to the issue of cost allocation is not contested.<sup>376</sup> The record in this case clearly illustrates the thorough consideration

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<sup>372</sup> We are aware that several components of the OMS CARP proposal were not submitted as part of the MVP Proposal; however, the concept of a postage stamp rate was addressed. We therefore can take from that vote that 10 of the 13 voting states did not have an overwhelming objection to the applicability of a postage stamp rate.

<sup>373</sup> OMS September 10, 2010 Comments, Docket No. ER10-1791-000 at 2. We further note that nine of the 13 states that expressed an opinion on the proposal supported it.

<sup>374</sup> See Midwest ISO, *Midwest ISO Advisory Committee May 19, 2010 Draft Minutes, available at* <https://www.midwestiso.org/Library/Repository/Meeting%20Material/Stakeholder/AC/2010/20100616/20100616%20AC%20Item%2001c%20Minutes%2020100519.pdf>.

<sup>375</sup> The Midwest ISO Transmission Owners proposal passed by a vote of 15.5 in support, 4.5 opposed and 3 abstentions.

<sup>376</sup> Illinois Commission states that the proposal voted on at the Advisory Committee contained "dramatic differences" from Filing Parties' eventual MVP Proposal. But because Illinois Commission fails to specify those "dramatic differences," we cannot agree with its allegation that the Advisory Committee vote was vague.



of these issues by Midwest ISO and its stakeholders and demonstrates that the MVP Proposal was the result of negotiation and compromise.<sup>377</sup> On the basis of the action of the Advisory Committee and the comments supplied by OMS we are left with the conclusion that, consistent with Order No. 890, there was general support for a proposal that would appropriately allocate costs within Midwest ISO in a fair manner that satisfies the requirements of the Federal Power Act, and such a proposal was submitted by Midwest ISO in this proceeding.

179. While any party to this case is free to argue that modifications to the MVP Proposal might be more favorable to that party, that is not the question that we are addressing here. Even if modifications to the MVP Proposal could gather more support from various stakeholders at the cost of less support from others, the FPA requires that rates be just and reasonable and not unduly discriminatory or preferential. Thus, while we expect that stakeholders will share their views on how they are impacted by the MVP Proposal, the FPA does not require all stakeholders to reach a consensus on every point in contention in a tariff. Under the MVP Proposal, the essential purpose is to build needed transmission lines that provide numerous types of benefits as enumerated by the MVP Criteria. As the Commission has recognized, needed transmission lines can pay for themselves quickly and benefit a region well in excess of the cost of those lines.<sup>378</sup> The question of sufficient consensus is not whether a cost allocation method can be modified to favor one party, but whether the method satisfies the requirements of the FPA.<sup>379</sup>

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<sup>377</sup> See Filing Parties July 15, 2010 Filing, Tab G, Curran Test., at 18-19 (describing the stakeholder process used to develop the MVP Proposal). Curran's testimony notes, among other things, that the RECB Task Force met 20 times and the OMS CARP Group met 14 times since the July 9, 2009 filing "to discuss, evaluate, and provide feedback on potential long-term cost allocation solutions."

<sup>378</sup> See, e.g., *Removing Obstacles to Increased Electric Generation and Natural Gas Supply in the Western United States*, 95 FERC ¶ 61,225, at 61,765 ("Since transmission costs are a relatively small portion of delivered energy costs, the potential savings on the commodity side due to greater transmission capacity and less congestion far outweigh the cost embodied in these incentives."), *order on requests for reh'g and clarification*, 96 FERC P 61,155, *further order on requests for reh'g and clarification*, 97 FERC P 61,024 (2001).

<sup>379</sup> See, e.g., *Midwest Indep. Transmission Sys. Operator, Inc.*, 118 FERC ¶ 61,209, at P 231 (2007) (in conditionally accepting Midwest ISO's proposed cost allocation for regionally beneficial projects notwithstanding that stakeholder support for the proposal was not unanimous, the Commission noted that "[t]he absence of a [stakeholder] consensus does not preclude the Midwest ISO from presenting a proposal to

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180. Other parties challenge the MVP Proposal on the basis that the MTEP stakeholder process is irrelevant to whether the transmission cost allocation methodology is just and reasonable. These parties claim that the MTEP stakeholder process cannot justify an otherwise unjust and unreasonable methodology, and cannot be a substitute for the Commission's judgment regarding cost allocation for MVPs. These arguments misconstrue the role of the MTEP stakeholder process with respect to the MVP Proposal. As proposed by Filing Parties, the MVP Proposal provides a framework for considering candidate projects that may qualify for MVP cost allocation. Midwest ISO and its stakeholders will evaluate candidate projects to determine whether they meet the MVP Criteria and are not excluded from consideration as an MVP candidate by the Exclusion Criteria. The MTEP stakeholder process provides the forum for this analysis. As affirmed above, in the MVP Order the Commission properly concluded that the criteria identified by Midwest ISO and its stakeholders will ensure that those projects qualifying as MVPs will provide regional benefits that are roughly commensurate with the costs that will be assessed, and are therefore just and reasonable. Likewise Midwest ISO's and the Commission's dispute resolution and complaint processes provide additional opportunities to challenge MVP determinations.

181. In summary, any stakeholder that is dissatisfied with the results of an MVP determination may dispute a project qualifying for MVP treatment. This outcome is no different from other Commission tariffs that establish rates. In general, every Commission tariff must be just and reasonable and not unduly discriminatory or preferential. And to the extent that a utility applies its tariff in an unduly discriminatory fashion or in a manner that is not just and reasonable, parties have the opportunity under the FPA to complain to the Commission. Accordingly, as detailed above, the MTEP stakeholder process does not usurp the Commission's authority to establish a just and reasonable rate; rather, the MVP Proposal, which we continue to find just and reasonable, establishes the rate, and Midwest ISO and its stakeholders will apply it in the MTEP

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the Commission.”). In that same order, the Commission directed Midwest ISO to revise its methodology for measuring benefits of a proposed economic project even though that methodology was supported by the stakeholder process. In its order denying rehearing, the Commission upheld that determination (“While we listen very carefully to the results of the stakeholder process, we must consider the proposal before us on the merits. In the RECB II Order, the Commission recognized that the proposal was supported by stakeholders, but found that the particular proposal had not been adequately supported and that the outcome may lead to unjust and unreasonable results. Thus, the Commission modified the proposal in order to satisfy its statutory obligations.”). *Midwest Indep. Transmission Sys. Operator, Inc.*, 120 FERC ¶ 61,080 (2007).

stakeholder process.<sup>380</sup> The Commission has not, as some allege, abdicated its regulatory responsibilities to a flawed stakeholder process. The Commission recently found that “Midwest ISO’s existing governance procedures and stakeholder processes meet the requirements of Order No. 719.”<sup>381</sup> Thus, in meeting these requirements of Order No. 719, candidate MVPs will necessarily be evaluated in an inclusive stakeholder process that fairly balances diverse interests.

182. Finally, parties’ comparisons with the PJM cost allocation proceeding are inapposite. There, as in this case, the Commission applied the three principles established in Order No. 890 and noted that it would “defer, where possible, to regional consensus.”<sup>382</sup> The Commission, however, found no regional consensus for any of the many proposals presented in the administrative hearings,<sup>383</sup> and the Seventh Circuit noted the absence of consensus in its decision.<sup>384</sup> In contrast, the evidence in the record demonstrates that the MVP Proposal has received general support from state authorities and participants. Pursuant to Order No. 890, the Commission gave proper weight to this general support in the MVP Order. And, as stated above, that is a different issue from

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<sup>380</sup> We note that the parameters pursuant to which candidate MVPs will be evaluated, the MVP Criteria and the Exclusion Criteria, will be part of the Tariff. *See, e.g.,* Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451A-3451C. For this reason, we reject challenges that the Tariff does not require comparison of costs and benefits and that the MTEP stakeholder process cannot add such a requirement. The MVP Criteria, which we affirm as just and reasonable above, establish the cost and benefit requirements that candidate MVPs must meet to qualify for MVP transmission cost allocation. During the MTEP stakeholder process, Midwest ISO and its stakeholders will determine if projects comply with these requirements, and therefore, the Tariff.

<sup>381</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 133 FERC ¶ 61,068 at P 44 (2010).

<sup>382</sup> Opinion No. 494, 119 FERC ¶ 61,063 at P 64.

<sup>383</sup> Opinion No. 494, 119 FERC ¶ 61,063 at P 68 (“In this case, however, there is no consensus to which to defer, but rather only an endless cycle of litigation. . . . The evidence indicates that there is no reasonable possibility for regional consensus on cost allocation within PJM in the near future.”).

<sup>384</sup> *See Illinois Commerce Commission*, 576 F.3d at 475 (noting the Commission’s acknowledgement that there was no regional consensus).

whether or not every participant in the stakeholder process agreed with every aspect of the MVP Proposal.

2. **Additional Issues**

a. **Clarification Regarding Underwater and Underground Transmission Lines**

183. We grant the clarification requested by Midwest ISO Transmission Owners regarding underground and underwater transmission lines. In the MVP Order, the Commission stated, “projects cannot be considered for MVP cost allocation if they include: 1) an underground or underwater transmission line with costs above and beyond the cost of an alternative overhead transmission line providing comparable benefits . . .”<sup>385</sup>

184. Midwest ISO Transmission Owners state that even though this language appears in the section of the order summarizing the MVP Proposal, and not in the “Substantive Matters” portion of the order, it requests, out of an abundance of caution, clarification that the Commission did not intend to alter Midwest ISO’s proposed Tariff revisions regarding costs related to underground and underwater transmission lines. According to Midwest ISO Transmission Owners, it is the cost of an underground or underwater transmission line “*above and beyond* the cost of a feasible overhead transmission line that is not eligible for MVP cost allocation.”<sup>386</sup> Midwest ISO Transmission Owners request that the Commission clarify that it is only the costs of an underground or underwater transmission line that exceed the costs of a feasible overhead line with comparable benefits that will be excluded from MVP cost allocation. If the Commission intended to exclude such underground or underwater lines from MVP consideration, Midwest ISO Transmission Owners request rehearing as such a finding would be contrary to the proposed Tariff language and the intent of Filing Parties.

185. We grant the requested clarification. First Revised Sheet No. 3451 states:

All Network Upgrades associated with a Multi Value Project including any lower voltage facilities that may be needed to relieve applicable reliability criteria violations that are projected to occur as a direct result of the development of the Multi Value Project; may be cost shared per [s]ection

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<sup>385</sup> MVP Order, 133 FERC ¶ 61,221 at P 30.

<sup>386</sup> Midwest ISO Transmission Owners Request for Rehearing at 18 (emphasis in original).

III.A.2.g of Attachment FF except for i) any Network Upgrade cost associated with constructing an underground or underwater transmission line above and beyond the cost of a feasible alternative overhead transmission line that provides comparable regional benefits . . .

186. As noted by Midwest ISO Transmission Owners, the summary of this provision in the MVP Order is inaccurate because it would exclude from MVP cost allocation any project that includes an underground or underwater transmission line with costs above and beyond the cost of an alternative overhead transmission line providing comparable benefits. The Tariff actually excludes from MVP cost allocation Network Upgrade costs associated with constructing an underground or underwater transmission line that exceed the cost of a feasible alternative overhead transmission line that provides comparable regional benefits. The Commission grants the requested clarification and affirms that it did not intend to exclude underground and underwater transmission lines from MVP consideration entirely. Pursuant to the Tariff, any Network Upgrade cost associated with constructing an underground or underwater transmission line above and beyond the cost of a feasible alternative overhead transmission line that provides comparable regional benefits is excluded from MVP transmission cost allocation.

**b. Consistency with Transmission NOPR**

187. MISO Northeast Transmission Customers' request for rehearing regarding potential conflicts with the Transmission proceeding is denied. The Commission's conditional acceptance of the MVP Proposal was not premature, nor did it violate the Administrative Procedure Act. As the Commission stated in the MVP Order, and as MISO Northeast Transmission Customers acknowledge,<sup>387</sup> Midwest ISO, like all jurisdictional entities, is subject to any future rulemakings. Midwest ISO filed the MVP Proposal under section 205 of the FPA; as such, the Commission had a statutory obligation to process the filing in a timely manner. Because the MVP Order addressing Filing Parties' MVP Proposal preceded Order No. 1000, the Commission correctly reviewed Filing Parties' proposal in light of the Commission's existing policies.<sup>388</sup> If the Commission refrained from acting on proposals merely to avoid potential conflicts with potential future rulemakings, it would be hampered in its ability to complete its work that is required by the FPA.

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<sup>387</sup> MISO Northeast Transmission Customers Request for Rehearing at 23 (citing MVP Order, 133 FERC ¶ 61,221 at n.5).

<sup>388</sup> See, e.g., *Commonwealth Edison Co.*, 23 FERC ¶ 61,219, at 61,465 (1983) (declining to apply a proposed rule because it was not in effect yet).

188. Further, we find that MISO Northeast Transmission Customers' arguments pertaining to whether the Commission appropriately solicited and considered comments or was improperly influenced by the MVP Proposal in the Transmission NOPR proceeding are outside of the scope of this proceeding, and as such, we will not consider them here. We note that on July 21, 2011, the Commission issued a Final Rule regarding cost allocation and transmission planning.<sup>389</sup> Among other things, Order No. 1000 requires each public utility transmission provider to submit a compliance filing, revising its OATT or other documents subject to the Commission's jurisdiction to demonstrate that it meets the requirements set forth in the Final Rule. Our determinations here address only the issues on rehearing and should not be construed as predetermining any aspects of the compliance filings public utility transmission providers in the Midwest ISO region are required to make under the Final Rule.<sup>390</sup>

**c. Challenges to MTEP Stakeholder Process**

189. We deny rehearing regarding Illinois Commission's request to modify or eliminate the out-of-cycle review process. Illinois Commission's objections pertain to an existing Tariff mechanism that Filing Parties did not propose to change, and that is not at issue in this proceeding. Further, Illinois Commission's arguments apply to the out-of-cycle review process generally and do not raise any concerns that are specific to the application of the existing out-of-cycle review process to the MVP Proposal. Accordingly, we find that Illinois Commission's arguments constitute untimely, collateral attacks on the Commission's prior order accepting the out-of-cycle review process as part of Midwest ISO's Order No. 890 compliance filing,<sup>391</sup> and we will not consider them here. As the

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<sup>389</sup> *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011).

<sup>390</sup> See also, e.g., *Southern California Edison Co.*, 114 FERC ¶ 61,018, at 61,046 (2006) (in denying an application for transmission rate incentives based on a then-proposed rulemaking, the Commission held that "it is premature for us to consider Edison's citation of the NOPR in support for its requested incentive adders before we issue a final rule in that proceeding."); *ANR Pipeline Co.*, 87 FERC ¶ 61,241, at 61,943 (1999) (in denying an intervenor's request to defer an applicant's proposal pending the outcome of a rulemaking, the Commission held that "If changes in policy occur as a result of the rulemaking proceedings, then ANR may be required to modify its tariff. In the meantime, however, we have no basis under our current policies to reject the proposed tariff language.").

<sup>391</sup> May 15, 2008 Order, 123 FERC ¶ 61,164. As Midwest ISO stated in that proceeding, Attachment FF limits the out-of-cycle review to "urgent circumstances for those [t]ransmission [o]wners electing to integrate their planning with the regional

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Commission stated in the MVP Order, the Tariff includes procedures to ensure stakeholder input into the transmission planning process, and the out-of-cycle review process is still subject to all other requirements contained in Attachment FF (e.g., openness, transparency, and information sharing).<sup>392</sup> We also note that Midwest ISO and its stakeholders are currently evaluating whether MTEP projects should be reviewed more frequently (e.g., semi-annually), which could reduce the need for out-of-cycle reviews.<sup>393</sup> We will not preempt the stakeholder process by revisiting the out-of-cycle review process at this time.

190. Upon further consideration, however, we will grant IPL's rehearing request and direct Midwest ISO to revise its Tariff to include periodic reviews of the costs and benefits associated with MVPs and to disseminate the relevant data to stakeholders. We believe these reviews will strengthen Midwest ISO's transmission planning process by allowing Midwest ISO and its stakeholders to better understand the costs and benefits resulting from MVPs, including their distribution across the Midwest ISO region. We expect that these reviews will provide an additional safeguard that ensures that the MVP methodology is working as expected, informs stakeholder decisions regarding future transmission plans, and provides a basis for any potential adjustments to the allocation of the costs associated with those MVPs.

191. Consistent with IPL's request, we will require Midwest ISO to conduct reviews at least every three years in order to monitor the costs and benefits of the cumulative effects of all approved MVPs. Midwest ISO should work with its stakeholders to determine the factors that should be considered in such reviews. At minimum, Midwest ISO should perform analyses of relevant economic factors (e.g., load forecasts, fuel prices, and environmental costs), quantify the economic benefits of MVPs (e.g., production cost savings, capacity losses savings, decreased planning reserve margins, and avoided projects), and examine the qualitative impacts of MVPs (e.g., public policy benefits).<sup>394</sup>

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process in order to ensure proper stakeholder vetting of projects, and this results in the most efficient, least costly, and best coordinated regional development process.” Midwest ISO December 7, 2007 Compliance Filing, Docket No. OA08-53-000, at 14.

<sup>392</sup> MVP Order, 133 FERC ¶ 61,221 at P 212, n.271.

<sup>393</sup> Midwest ISO Board of Directors System Planning Committee, *MTEP 11 Scope and Reporting*, at 6-7 (Nov. 30, 2010) available at [http://www.midwestmarket.org/publish/Document/6a7e86\\_12bc0f1b440\\_-79f90a48324a?rev=2](http://www.midwestmarket.org/publish/Document/6a7e86_12bc0f1b440_-79f90a48324a?rev=2).

<sup>394</sup> See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. FF, § II.C.

Midwest ISO should provide the results of the review to the appropriate stakeholder committee(s) (e.g., RECB Task Force, Advisory Committee) and publish the results and underlying analyses on the Midwest ISO website. Accordingly, we will require Midwest ISO to submit, in a compliance filing due within 180 days from the date of this order, Tariff revisions to provide for reviews of the MVP methodology, as discussed above.

**d. Inclusion of Market Efficiency Project Category**

192. In its request for rehearing, IPL alleges that the Commission failed to address its argument that Midwest ISO's inclusion of the term "Market Efficiency Projects," as set forth in proposed First Revised Sheet Nos. 3444-3450, is not developed enough to be included in the MVP Proposal. Specifically, IPL states that the metrics for Market Efficiency Projects have not been developed and vetted adequately through the stakeholder process. We reject IPL's argument. Midwest ISO only replaced the term "Regional Beneficial Projects" with the term "Market Efficiency Projects" in the aforementioned Tariff sheets. Midwest ISO did not propose to change any of the qualifying criteria or metrics previously approved in the RECB II proceeding. The change in nomenclature is ministerial and does not have a substantive impact. Accordingly, we deny IPL's request for rehearing on this issue.<sup>395</sup>

**e. Challenges to Statutory Authority**

193. Industrial Customers argue that the Commission exceeded the boundaries of the FPA and violated federalism principles by enabling rate recovery in support of renewable portfolio standards or similar policies.<sup>396</sup> In addition, they argue that the Commission reversed the concept of regulatory federalism embodied in the FPA and the Energy Policy Act of 2005 by giving Midwest ISO authority to impose the public policy

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<sup>395</sup> IPL's statements are ambiguous and could also be read as a challenge to Criterion 2 on the basis that the requirements of that criterion have not been developed or sufficiently vetted through the stakeholder process. We also reject this argument. In the MVP Proposal the Filing Parties clearly articulated the types of economic benefits that a proposed project must provide in order to qualify as an MVP. *See* Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. FF, Original Sheet Nos. 3451D and 3451E. In addition, as discussed in further detail elsewhere in this order, we are satisfied that Criterion 2, which requires that a proposed MVP provide multiple types of economic value across multiple pricing zones with a benefit-to-cost ratio of 1.0 or higher, is just and reasonable.

<sup>396</sup> Industrial Customers Request for Rehearing at 12-16.



requirements of one state on consumers in another state.<sup>397</sup> Similarly, MISO Northeast Transmission Customers assert that multi-state cost allocation is a congressional matter, not an administrative policy matter.<sup>398</sup> We disagree.

194. Contrary to the claims of Industrial Customers, the Commission acted fully within its statutory authority in conditionally accepting the MVP Proposal and did not violate any federalism principles. Midwest ISO explains that the MVP proposal will facilitate the development of renewable generation required to satisfy documented public policy requirements by removing potential cost barriers to integrating larger amounts of generation.<sup>399</sup> The changes outlined in its proposal bring what Midwest ISO describes as a much-needed regional perspective to inherently regional projects.<sup>400</sup> The MVP Order also acknowledges a focus by Congress and the Commission on promoting reliability and transmission infrastructure development.<sup>401</sup> The Commission found that the MVP Proposal is an important step in facilitating investment in new transmission facilities to effectively and efficiently integrate the various Midwest ISO utility systems and generation resources into a robust regional system, including renewable generation resources, to further support documented energy policy mandates or laws, reduce congestion, and accommodate new or growing loads.<sup>402</sup> As explained in the MVP Order, the MVP Proposal presents a functional approach to transmission planning, and the evaluation of MVPs will become a component of the Midwest ISO transmission planning process that the Commission has already approved pursuant to Order No. 890.<sup>403</sup>

195. Industrial Customers mischaracterize the Commission's actions as a distortion of traditional ratemaking principles, particularly cost causation, and a creative ratemaking to promote state renewable portfolio standards.<sup>404</sup> They further mischaracterize the MVP

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<sup>397</sup> Industrial Customers Request for Rehearing at 15-16.

<sup>398</sup> MISO Northeast Transmission Customers Request for Rehearing at 28-31.

<sup>399</sup> Curran Test. at 5.

<sup>400</sup> *Id.* at 5-6.

<sup>401</sup> MVP Order, 133 FERC ¶ 61,221 at n.247 (citing 16 U.S.C. §§ 824o and 824 (2006)).

<sup>402</sup> MVP Order, 133 FERC ¶ 61,221 at P 190.

<sup>403</sup> MVP Order, 133 FERC ¶ 61,221 at P 193.

<sup>404</sup> Industrial Customers Request for Rehearing at 15.

Order as authorizing Midwest ISO to impose one state's public policy requirements on other states. We reject these characterizations.

196. We have explained how the MVP Proposal complies with cost causation principles elsewhere in this order and will not repeat that explanation here. In addition, the FPA gives the Commission broad authority to address issues regarding transmission planning<sup>405</sup> and infrastructure investment concerns.<sup>406</sup> Moreover, as explained elsewhere in this order, the MVP Proposal provides for an open stakeholder process to analyze each candidate MVP. The MVP Proposal requires that, in order to qualify as an MVP, each candidate project must meet at least one of three criteria, one of which requires support of documented energy policy mandates or laws. As explained *supra* in the section on Documented Energy Policy Mandates or Laws, a robust transmission system supports and facilitates intra-Midwest ISO market transactions. As further discussed *supra* P 150, the proposal here is consistent with Midwest ISO's operation and planning. Moreover, such benefits would still have to be roughly commensurate to the costs allocated.

197. Finally, MISO Northeast Transmission Customers claim that only Congress can impose a renewable portfolio standard across multiple states.<sup>407</sup> Again, this claim mischaracterizes the MVP Order, as well as the stakeholder process under the MVP Proposal. The Commission's authority to approve regional planning proposals that include regional cost allocation, where appropriate, is clear, as discussed elsewhere in this order.

#### **IV. Issues Related to Generator Interconnection**

##### **A. Background**

198. As previously described, July 9 Applicants filed the Interim Cost Allocation Proposal to address certain unanticipated consequences experienced under the then-effective RECB cost allocation rules for generator interconnection projects. As described by July 9 Applicants, zones with high wind-power development potential and low native load were burdened with a disproportionate share of the costs of generator interconnection projects. Under the Interim Cost Allocation Proposal, interconnection customers would be responsible for 100 percent of the costs of generator interconnection projects rated below 345 kV; they would also pay 90 percent of the costs of generator

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<sup>405</sup> See, e.g., Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 422.

<sup>406</sup> See Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 1.

<sup>407</sup> MISO Northeast Transmission Customers Request for Rehearing at 29.

interconnection projects rated at 345 kV and above, with the remaining 10 percent being recovered on a system-wide basis. Midwest ISO also offered to provide the Commission with quarterly reports on the status of stakeholder discussions taking “a comprehensive look at new transmission cost allocation in light of possible major ‘superhighway’ transmission projects to facilitate regional or inter-regional movement of large quantities of power from remote areas.”<sup>408</sup> In addition, July 9 Applicants indicated that these stakeholder discussions would consider additional improvements to the generator interconnection project cost allocation methodology.

199. In the October 23, 2009 Order, the Commission accepted the Interim Cost Allocation Proposal, conditioned upon July 9 Applicants meeting their commitment to file superseding Tariff revisions on or before July 15, 2010, and required periodic informational status reports. The Commission also recognized that Midwest ISO was engaged in a stakeholder process seeking a longer-term solution to the existing cost allocation issues. The Commission strongly encouraged Midwest ISO and its stakeholders to use the stakeholder process for the evaluation of reforms to transmission planning and cost allocation to more efficiently plan transmission expansions interconnecting and integrating new generation resources. The Commission suggested that “stakeholders may take a comprehensive approach to evaluating transmission needs by considering what new transmission is needed in light of load growth forecasts, aggregate generation interconnection requests, reliability and economic needs and benefits, and state resource policies.”<sup>409</sup>

200. The MVP Order accepted Midwest ISO’s proposal to make permanent the Interim Cost Allocation Proposal accepted in the October 23, 2009 Order.<sup>410</sup> The Commission concluded that the Interim Cost Allocation Proposal remains just and reasonable, particularly when viewed in light of the MVP and SNU classifications. The MVP Order stated that, pursuant to Order No. 2003, independent system operators like Midwest ISO have discretion to propose appropriate cost allocation methodologies for interconnection-related new transmission.<sup>411</sup>

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<sup>408</sup> July 9 Applicants, July 9, 2009 Filing, Transmittal Letter at 7.

<sup>409</sup> October 23, 2009 Order, 129 FERC ¶ 61,060 at P 60.

<sup>410</sup> MVP Order, 133 FERC ¶ 61,221 at P 332.

<sup>411</sup> MVP Order, 133 FERC ¶ 61,221 at P 333 (citing *Standardization of Generator Interconnection Agreements and Procedures*, Order No. 2003, FERC Stats. & Regs. ¶ 31,146, at P 695 (2003) *order on reh’g*, Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160, *order on reh’g*, Order No. 2003-B, FERC Stats. & Regs. ¶ 31,171 (2004), *order*

201. The MVP Order also found that the MVP Proposal strikes a balance by retaining the Interim Cost Allocation Proposal while allowing a means for generators to mitigate those costs by choosing to site their projects closer to MVP facilities. Finding the MVP Proposal just and reasonable, the order does not address the merits of alternative proposals (e.g., allocation of 20 percent of MVP costs to interconnecting generators).

**B. No Direct Assignment of MVP Costs to Generators**

**1. MVP Order**

202. The MVP Order found that an allocation of MVP costs to Midwest ISO loads is just and reasonable and rejected calls to assign MVP costs to generators. It determined that the MVP Proposal strikes an appropriate balance between generation developers and other interests in Midwest ISO by retaining the existing reimbursement policy while allowing a means for generators to mitigate the costs of new transmission by choosing to site near MVPs.<sup>412</sup>

**2. Requests for Rehearing**

203. Parties argue that the Commission erred in holding that it did not need to consider “alternatives” such as protesters’ request to allocate MVP costs to generators, because it found that the MVP Proposal was just and reasonable. Illinois Commission maintains that a cost allocation that neglects the allocation of costs to primary cost causers and beneficiaries cannot be just and reasonable.<sup>413</sup> MISO Northeast Transmission Customers argue that it is more accurate to say that they and other entities were not seeking an “alternative,” but were asking the Commission to require Midwest ISO to follow its long-standing pricing and cost allocation policy. They contend that the Commission’s acceptance of the MVP Proposal was an unsupported deviation from long-standing Commission policy and precedent and an arbitrary and capricious decision that was not based on substantial evidence in the record.<sup>414</sup>

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*on reh’g*, Order No. 2003-C, FERC Stats. & Regs., ¶ 31,190 (2005), *aff’d sub nom. Nat’l Ass’n of Regulatory Util. Comm’rs v. FERC*, 475 F.3d 1277 (D.C. Cir. 2007), *cert. denied*, 552 U.S. 1230 (2008)).

<sup>412</sup> MVP Order, 133 FERC ¶ 61,221 at P 240.

<sup>413</sup> Illinois Commission Request for Rehearing at 30 (citing MVP Order, 133 FERC ¶ 61,221 at P 240).

<sup>414</sup> MISO Northeast Transmission Customers Request for Rehearing at 25.

204. Illinois Commission and OMS<sup>415</sup> state that the decision not to allocate any MVP costs to interconnecting generators goes against the first factor that the Commission said it would use in Order No. 890 and which it claimed to use in the MVP Order (i.e., cost causation). Illinois Commission, Hoosier-SIPC, and OMS state that generators will be the primary causers and beneficiaries of MVP investment; that generators will derive quantifiable financial benefits from the sale of energy that is enabled by the construction of MVPs; and that the magnitude of this benefit will be unjustly increased if the bulk of their interconnection cost, the MVP cost, is funded by electric customers.<sup>416</sup>

205. Illinois Commission argues that instead of considering the total cost of interconnection (i.e., the MVP and the tie line to the remote generator), interconnecting generators will now only have to consider the latter part of the investment. For this reason, argue Illinois Commission and OMS, a generator will have the profit incentive to drive the MVP process to access the geographies closest to the most productive fuel resources (e.g., highest and most consistent wind speeds) regardless of the total cost of production, which considers both fuel and delivery costs. Illinois Commission asserts that while siting generation in areas with the greatest fuel resources sounds like a rational decision for both the generator and society as a whole, it is not necessarily so. Rather, Illinois Commission argues, the pursuit of the most productive fuel-rich sites must also consider delivery costs.<sup>417</sup>

206. Illinois Commission contends that Midwest ISO did not adequately support its proposal because it presented only one substantive reason for not allocating MVP costs to generators: that such an allocation would distort the market-clearing price, and that such

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<sup>415</sup> Indiana Commission, Michigan Commission, North Dakota Commission, and South Dakota Commission do not join in OMS' request for rehearing of this issue.

<sup>416</sup> Illinois Commission Request for Rehearing at 29; *see also* Hoosier-SIPC Request for Rehearing at 18-20 (a decision not to allocate any MVP costs to generators requires a finding that generators neither cause MVPs to be constructed nor benefit from their construction, and there has been no such finding and the record would not support such a finding); OMS Request for Rehearing at 3-5 (generators will derive quantifiable financial benefits from the sale of energy because the bulk of their interconnection cost, the MVP cost, is funded by the general public).

<sup>417</sup> Illinois Commission Request for Rehearing at 30 and OMS Request for Rehearing at 3-5 (it appears that siting decisions of profit-motivated private generators is a primary cause of the MVP Proposal and those generators will derive the most concrete benefit; and, the decision not to allocate MVP costs to interconnecting generators will skew generation developers' location decisions).

distortion could lower utilization of new generators or increase total costs of MVP investment.<sup>418</sup> Illinois Commission contends that the lower utilization of new generators is not a convincing argument. It argues that the cost of transmission is a real cost that other generators will also have to recover over time. Regarding Midwest ISO's concern about an increase in the total cost of MVP investment, Illinois Commission argues that interconnection costs are traditionally fixed costs and both concerns could be addressed if MVP costs were simply allocated to generators on a capacity basis.<sup>419</sup>

207. MISO Northeast Transmission Customers take issue with the notion that generators should be encouraged to locate on transmission lines that Midwest ISO has determined to be MVP facilities. Such an outcome, they contend, amounts to a subsidy, unduly discriminates against generators located in areas that do not benefit from MVPs, and departs from the Commission's LMP-based congestion approach to encouraging generator siting.<sup>420</sup> As to the last concern, MISO Northeast Transmission Customers state that here, the price signal is one that actually eliminates price signals by relieving the generators that connect to an MVP of all cost responsibility for new transmission. In this regard, MISO Northeast Transmission Customers again state that the Commission's decision was arbitrary and capricious and unsupported by record evidence.

208. MISO Northeast Transmission Customers contend that, given the Commission's decision not to assess any MVP-related export fee to PJM, allocating MVP costs to generators would appropriately charge wind generation a portion of the transmission cost that will allow them to profit from exporting wind energy outside of Midwest ISO. Only by charging a reasonable portion of MVP costs to generators will it be possible to ensure that a higher portion of transmission costs are appropriately allocated to the states that have elected to have a renewable portfolio standard or to have a higher renewable portfolio standard than the Midwest ISO average.<sup>421</sup>

209. Finally, MISO Northeast Transmission Customers say that there is no record evidence to support the MVP Order's statement that "the MVP proposal resolves a key

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<sup>418</sup> Illinois Commission Request for Rehearing at 31.

<sup>419</sup> Illinois Commission Request for Rehearing at 31. *See also* OMS Request for Rehearing at 5.

<sup>420</sup> MISO Northeast Transmission Customers Request for Rehearing at 26, 34-36.

<sup>421</sup> MISO Northeast Transmission Customers Request for Rehearing at 26-27.

issue that is preventing significant new transmission from being built – who pays.”<sup>422</sup> There is no claim, they say, that Midwest ISO’s Commission-approved policies for allocating the cost of new transmission have prevented significant new transmission from being built.

### 3. Commission Determination

210. We reject arguments that the Commission erroneously failed to consider benefits to generators or alternative cost allocation proposals when evaluating the MVP Proposal. In the MVP Order, the Commission approved Filing Parties’ proposal to retain the Interim Cost Allocation Proposal. The Commission concluded that the previously-accepted methodology remained just and reasonable, particularly when viewed as part of a package of reforms accompanying the MVP and SNU proposals.<sup>423</sup> As the Commission found, the MVP Proposal “strikes a balance by retaining the existing generator reimbursement policy while allowing a means for generators to mitigate those costs by choosing to site their projects closer to MVP facilities. . . .”<sup>424</sup> In accepting these processes, the Commission approved a methodology in which the costs of new transmission facilities that provide regional benefits are allocated on a regional basis while new transmission facilities required solely for generator interconnection service are allocated to the interconnection customer that caused the new transmission facilities to be necessary. In this manner, generators still receive pricing signals that encourage them to select efficient locations for their generation resources.<sup>425</sup> The Commission also determined, and we continue to find, that the MVP Proposal is within the range of

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<sup>422</sup> MISO Northeast Transmission Customers Request for Rehearing at 36 (citing MVP Order, 133 FERC ¶ 61,221 at P 210).

<sup>423</sup> MVP Order, 133 FERC ¶ 61,221 at P 332.

<sup>424</sup> MVP Order, 133 FERC ¶ 61,221 at P 240 (internal citation omitted). Moreover, we believe that the fact that there is such a “balance” constitutes sufficient support to accept the filing, and this addresses Illinois Commission’s concerns.

<sup>425</sup> Illinois Commission’s arguments that challenge Midwest ISO’s concerns about potential distortion of market clearing prices merely reiterate its opposition to Midwest ISO’s rationale for the MVP Proposal but do not address the determination in the MVP Order. Thus, those arguments do not persuade us to change the Commission’s determination.

reasonable cost allocation methods.<sup>426</sup> Therefore, the Commission did not need to consider alternative proposals.<sup>427</sup>

211. Parties, including Illinois Commission and Hoosier/SIPC, argue that the MVP cost allocation should assess some costs to generators, because generators benefit from MVPs. These requests for rehearing take too narrow a view of the cost allocation approved in the MVP Order, which addressed both new transmission and generator interconnection facilities.

212. We are not persuaded by Illinois Commission's argument that generators are the primary cost causers and beneficiaries of new transmission. As noted above, the issue before the Commission was whether the MVP Proposal was just and reasonable. We continue to believe that the MVP Proposal meets the roughly commensurate comparison defined in *Illinois Commerce Commission*. In the past, we have required Midwest ISO to determine what portion of new transmission is attributable to generator interconnections, but this is a time-intensive and resource-intensive process that may not be viable when applied to many projects all at the same time (e.g., the 16 starter projects). Under the MVP Proposal, new generators will pay their fair share of costs through the interconnection process. It provides a measure of certainty in transmission and interconnection planning and encourages projects to move forward efficiently.

213. Furthermore, we deny rehearing with respect to MISO Northeast Transmission Customers' argument that allocating MVP costs to generators would appropriately charge a portion of transmission costs to wind generators who will export wind energy outside of

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<sup>426</sup> MVP Order, 133 FERC ¶ 61,221 at P 240, 332.

<sup>427</sup> See *Oxy USA, Inc. v. FERC*, 64 F.3d 679, 692 (D.C. Circuit 1995) (*Oxy USA*) (finding that under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology "need not be the only reasonable methodology, or even the most accurate one"); cf. *City of Bethany v. FERC*, 727 F.2d 1131, 1136, 234 U.S. App. D.C. 32 (D.C. Cir. 1984) (when determining whether a proposed rate was just and reasonable, the Commission properly did not consider "whether a proposed rate schedule is more or less reasonable than alternative rate designs"). See also, e.g., June 17, 2010 Order, 131 FERC ¶ 61,252 at P 124 & n.154 ("[H]aving found SPP's proposal just and reasonable, we need not address the merits of the alternative proposal."); *Cal. Indep. Sys. Operator Corp.*, 128 FERC ¶ 61,282, at P 31 (2009) (same); *Louisville Gas & Electric Co.*, 114 FERC ¶ 61,282, at P 29 (2006) (LG&E Withdrawal Order) (finding that "the just and reasonable standard under the FPA is not so rigid as to limit rates to a 'best rate' or 'most efficient rate' standard. Rather, a range of alternative approaches often may be just and reasonable.").



Midwest ISO. As we explain elsewhere in this order, MVP costs should not be applied to exports to PJM so as not to disturb the balance of the markets between Midwest ISO and PJM that was achieved by the elimination of pancaked rates. MVP costs are allocated to other exports, and will be captured in the usage rate applied to such sales. Further, the package of processes that the Commission has approved in this proceeding permits careful attention to the issue of matching the costs to the benefits of new transmission. We are confident that this process will yield a just and reasonable allocation of costs. For this reason, we disagree with MISO Northeast Transmission Customers' argument that a separate allocation of costs to generators is the only means by which to ensure that the costs of meeting renewable portfolio standards fall proportionately within the Midwest ISO footprint.

214. With respect to MISO Northeast Transmission Customers' argument that no record evidence was presented that Midwest ISO's current policies have prevented the construction of significant new transmission, we note that Filing Parties explained that the MVP Proposal is part of "an ongoing, comprehensive review of Midwest ISO's RECB transmission cost allocation methodologies."<sup>428</sup> As the Commission explained in the MVP Order, Midwest ISO previously advised the Commission that "many stakeholders were dissatisfied with the RECB cost allocation rules and recommended a continued review of the unanticipated consequences of those rules, and consideration of possible solutions."<sup>429</sup> Among the issues raised by stakeholders was the concern that although Regionally Beneficial Projects were proposed, none of the potential projects tested had passed the thresholds for inclusion and allocation on that basis.<sup>430</sup> In the August 2008 RECB Report, Midwest ISO also noted that preliminary analysis of the transmission projects required to mitigate the top 10 constraints forecasted for 2013 revealed that those projects would likely not pass the RECB II cost benefit ratio required for cost sharing eligibility.<sup>431</sup> Midwest ISO noted these and other issues, and

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<sup>428</sup> MVP Order, 133 FERC ¶ 61,221 at P 9. *See also* Filing Parties July 15, 2010 Filing, Transmittal Letter at 2.

<sup>429</sup> MVP Order, 133 FERC ¶ 61,221 at P 15.

<sup>430</sup> *See* Midwest ISO August 29, 2008 Informational Compliance Filing, Docket No. ER06-18-013, at 5 (August 2008 RECB Report). Midwest ISO also stated: "Initial testing of 5 projects and/or portfolios of projects, specifically identified as being driven by potential benefits other than reliability, resulted in no projects passing the RECB II threshold criteria, and thus being identified as Regionally Beneficial, for the timeframe in question." *Id.* at 11.

<sup>431</sup> August 2008 RECB Report at 12.

recommended that the stakeholder process focus on the issues identified in the August 2008 RECB Report, develop alternate solutions as appropriate, and address those solutions through future filings with the Commission.<sup>432</sup> Midwest ISO expressed similar concerns in a subsequent informational report.<sup>433</sup> In that report, Midwest ISO noted that the RECB Task Force had been authorized to address, through a phased process, the issues and concerns identified in the August 2008 RECB Report and raised by stakeholders.<sup>434</sup> It was Phase II of this process that led to the MVP Proposal. Accordingly, the Commission disagrees with MISO Northeast Transmission Customers' argument that Midwest ISO's current policies have not served as a barrier to transmission construction. While some transmission is being planned and built in Midwest ISO,<sup>435</sup> Midwest ISO and its stakeholders recognize that there is room for improvement with respect to its cost allocation and planning policies,<sup>436</sup> and filed the MVP Proposal to rectify those issues.

**C. Commission's Acceptance of Generator Interconnection Projects Cost Allocation Methodology**

**1. MVP Order**

215. The MVP Order accepted Midwest ISO's proposal to retain the Interim Cost Allocation Proposal accepted in the October 23, 2009 Order.<sup>437</sup> The Commission concluded that the Interim Cost Allocation Proposal remains just and reasonable, particularly when viewed in light of the MVP and SNU classifications. Although several parties challenged the Interim Cost Allocation Proposal on the basis that the benefits of the Network Upgrades were not commensurate with the costs that interconnection

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<sup>432</sup> August 2008 RECB Report at 17.

<sup>433</sup> See Midwest ISO August 31, 2009 Informational Compliance Filing, Docket No. ER06-18-000 (August 2009 RECB Report).

<sup>434</sup> August 2009 RECB Report at 7-8.

<sup>435</sup> See August 2008 RECB Report at 4; August 2009 RECB Report at 3.

<sup>436</sup> See also, e.g., a presentation to the Commission by Brattle Group, *Transmission Investment Needs and Cost Allocation: New Challenges and Models*, at 12-13 (Dec. 1, 2009) (asserting that Midwest ISO's planning process is a barrier to the development of regional projects).

<sup>437</sup> MVP Order, 133 FERC ¶ 61,221 at P 332.

customers would bear, the Commission stated that, pursuant to Order No. 2003, independent system operators like Midwest ISO have discretion to propose appropriate cost allocation methodologies for new transmission related to interconnections, including providing interconnection customers with capacity rights made feasible by such projects.<sup>438</sup> The Commission also noted that the MVP Proposal does not alter the Tariff with respect to an interconnection customer's entitlement to Financial Transmission Rights for costs not repaid.

## 2. Requests for Rehearing

216. AWEA-WOW and E.ON argue that the Commission's approval of the Interim Cost Allocation Proposal departed from its precedent to strike a reasonable balance between cost causers and beneficiaries by allocating costs almost entirely to cost causers. AWEA-WOW request rehearing of the Commission's decision to accept the Interim Cost Allocation Proposal as a permanent cost allocation methodology for new transmission for generator interconnections. AWEA-WOW argue that the Commission's approval of the Interim Cost Allocation Proposal in the October 23, 2009 Order was based on the methodology used being only temporarily, rather than because it was just and reasonable.<sup>439</sup> AWEA-WOW state that because it relied on the interim nature of the Interim Cost Allocation Proposal, the Commission did not make and has not made a determination of whether that methodology is just and reasonable. AWEA-WOW assert that the record lacks substantial evidence to support approval of the Interim Cost Allocation Proposal or to justify making the methodology permanent.<sup>440</sup> AWEA-WOW further argue that by approving the Interim Cost Allocation Proposal, the Commission has failed to adhere to principles of cost causation.

217. Specifically, AWEA-WOW assert that the Commission failed to identify the extent to which generator interconnection benefit all users of the integrated transmission system. AWEA-WOW argue that since benefit the system as a whole, the idea that a generator who is the immediate cause of an upgrade is also its "chief" beneficiary and should pay most of the upgrade costs is inconsistent with the reality of the integrated transmission system.<sup>441</sup> AWEA-WOW state that the long life of network upgrades supports allocating their costs more broadly, because over the useful life of the upgrade,

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<sup>438</sup> MVP Order, 133 FERC ¶ 61,221 at P 333.

<sup>439</sup> AWEA-WOW Request for Rehearing at 10.

<sup>440</sup> AWEA-WOW Request for Rehearing at 11-12.

<sup>441</sup> AWEA-WOW Request for Rehearing at 13-14.

the original cause for a network expansion becomes less significant in comparison to the benefits provided. Thus, according to AWEA-WOW, the Commission failed to reasonably balance the interests of cost causers and beneficiaries.<sup>442</sup> Finally, AWEA-WOW argue that the Interim Cost Allocation Proposal discriminates against location-constrained resources because it fails to recognize the special challenges posed by these resources, and that the generator interconnection projects cost allocation will impose significantly more costs on renewable resources than other types of resources.<sup>443</sup>

218. E.ON advances similar arguments to AWEA-WOW,<sup>444</sup> noting also that the Commission was required to approve the permanent generator interconnection cost allocation as just and reasonable on its own merits, not only as just and reasonable as part of the MVP Proposal. E.ON challenges the Commission's reliance on the "mitigation" of generator interconnection costs provided by the MVP or SNU classifications. E.ON questions the practical effect of these mechanisms, stating, for example, that a project may not qualify for MVP status; that Filing Parties have noted it will be at least five years, possibly longer, before an MVP is actually constructed; and that an SNU will be a mitigating factor only if other developers site new generation in the same location as, and connect to and benefit from, the network upgrade paid for by the initial developer.<sup>445</sup> E.ON argues that the MVP Order is inconsistent insofar as the Commission relies on the integrated nature of the transmission system to justify the MVP Proposal, but nevertheless directly assigns nearly all generator interconnection network upgrades to the interconnecting generator, even given the benefits those upgrades provide to all transmission system users.<sup>446</sup> E.ON asserts that the Commission failed to explain why the Interim Cost Allocation Proposal does not perpetuate existing barriers to the development of generation, or create market distortions and inefficiencies.<sup>447</sup> Finally, E.ON states that the Commission erred in accepting the MVP Proposal in part to solve

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<sup>442</sup> AWEA-WOW Request for Rehearing at 14-18.

<sup>443</sup> AWEA-WOW Request for Rehearing at 19-20.

<sup>444</sup> E.ON Request for Rehearing at 16-20.

<sup>445</sup> E.ON Request for Rehearing at 21-22.

<sup>446</sup> E.ON Request for Rehearing at 25.

<sup>447</sup> E.ON Request for Rehearing at 28-29.

free rider issues while refusing to address similar problems arising from direct assignment of network upgrade costs to interconnecting generators.<sup>448</sup>

### **3. Commission Determination**

219. We deny rehearing of the Commission's decision to retain the Interim Cost Allocation Proposal on a permanent basis. We reject arguments that the Commission improperly accepted the Interim Cost Allocation Proposal in the October 23, 2009 Order based solely on it being interim in nature. In the October 23, 2009 Order, the Commission accepted the Interim Cost Allocation Proposal as a just and reasonable means to address the unanticipated consequences of the pre-existing cost allocation methodology on an interim basis until Midwest ISO could fulfill its commitment to file a comprehensive cost allocation methodology by July 16, 2010. July 9 Applicants explained that stakeholder discussions regarding that comprehensive cost allocation methodology would consider additional improvements to the generator interconnection project cost allocation methodology as part of the Phase II process.<sup>449</sup> In the MVP Order, the Commission found that the Interim Cost Allocation Proposal remains just and reasonable, particularly when viewed as part of the MVP Proposal.<sup>450</sup> The arguments on rehearing do not persuade us to change the Commission's decision. Accordingly, we also reject arguments that the Interim Cost Allocation Proposal must be evaluated on a stand-alone basis. As the Commission emphasized in the MVP Order, the origin of the interim cost allocation proposal was that the line outage distribution factor (LODF) methodology approved in RECB II no longer produced just and reasonable results due to certain unanticipated consequences experienced under the then-effective RECB cost allocation rules for generator interconnection projects.<sup>451</sup> Filing Parties proposed a remedy to address the situation, and the Commission was required to address it. The Commission conditionally found Filing Parties' 90/10 interim cost allocation proposal to be just and reasonable, subject to their commitment to work on a comprehensive solution. That stabilized the situation in the interim while allowing Filing Parties and stakeholders to focus their efforts on developing a comprehensive long-term solution. Further, in the MVP Order and as we do in this order, the Commission has evaluated the entire package of processes and found that, collectively, they comprise a just and reasonable methodology for balancing the allocation of costs among those that cause the need for

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<sup>448</sup> E.ON Request for Rehearing at 30.

<sup>449</sup> July 9 Applicants July 9, 2009 Filing, Transmittal Letter at 23.

<sup>450</sup> MVP Order, 133 FERC ¶ 61,221 at P 332.

<sup>451</sup> MVP Order, 133 FERC ¶ 61,221 at P 16.

new transmission facilities and those that benefit from such transmission facilities.<sup>452</sup> Arguments that the Interim Cost Allocation Proposal discriminates against location-constrained resources or fails to address free-rider issues fail to consider the benefits provided under the other elements of the MVP Proposal. The intent of the overall proposal is to send a price signal that encourages developers to site efficiently. Failure to mitigate generator interconnection project costs would be indicative of a failure to site efficiently.

220. We also reject arguments that the Commission failed to explain why the Interim Cost Allocation Proposal does not perpetuate existing barriers to the development of generation, or create market distortions and inefficiencies. The provisions that E.ON refers to have been accepted as just and reasonable in previous proceedings and are therefore outside of the scope of this filing.

221. With respect to E.ON's argument that the Commission relied on the integrated nature of the transmission system to justify the MVP Proposal while assigning all costs of new transmission for generator interconnection projects to generators without consideration of the integrated nature of the transmission system, the MVP Order determined that the MVP cost allocation methodology was supported given the demonstration that MVPs provide commensurate regional benefits. Where a project has not been shown to provide regional benefits, it should not receive regional cost allocation. Network upgrades identified through the generator interconnection process may be allocated under the MVP methodology if the new transmission facility is approved for inclusion as an MVP in MTEP Appendix A.<sup>453</sup>

**D. Need for Longer Contingency Window or Transition Mechanism for Pending Network Upgrades**

**1. MVP Order**

222. In the MVP Order, the Commission accepted Filing Parties' proposal regarding Network Upgrades pending consideration as candidate MVPs. Under Filing Parties' proposal, if a Network Upgrade identified in a System Impact Study is also being considered as an MVP and is listed in MTEP Appendix B when a Generator

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<sup>452</sup> To the extent that a generator interconnection request triggers the need for generator interconnection upgrades, Order No. 2003 provides that the interconnection customer is responsible for the costs of all "but for" upgrades.

<sup>453</sup> MVP Order, 133 FERC ¶ 61,221 at P 338 (citing Filing Parties July 15, 2010 Filing, Lavery Test. at 33-4).

Interconnection Agreement is finalized, there is a period of time during which the project may be moved to MTEP Appendix A as an MVP, thereby releasing the interconnection customer from cost responsibility.<sup>454</sup> Filing Parties proposed that such a contingency period last for one year after the execution or unexecuted filing of the Generator Interconnection Agreement, or the issuance of the next annual MTEP report, whichever is later. During this period of time, the Network Upgrade would be listed as a contingency in the interconnection customer's Generator Interconnection Agreement. If the project is not approved, the interconnection customer would be responsible for funding the Network Upgrade. The Commission accepted the proposed one-year contingency period as just and reasonable.<sup>455</sup>

## 2. Requests for Rehearing

223. Iberdrola challenges the one-year contingency period accepted in the MVP Order. Iberdrola argues that, in essence, this mechanism establishes a one-year time limit for receiving MVP designation for a Network Upgrade and consequent removal of the Generator Interconnection Agreement funding contingency.<sup>456</sup> According to Iberdrola, if a project is not designated as an MTEP Appendix A facility (i.e., eligible for MVP cost allocation) within this timeframe, the cost of the Network Upgrade is assigned to the interconnecting customer, even if no conclusive decision has been made on the MVP status of the project.<sup>457</sup>

224. Iberdrola also argues that the Commission erred when it failed to address its recommendation to include a transition mechanism for interconnection customers currently in the interconnection queue. Iberdrola states that it urged Midwest ISO to: 1) permit interconnection customers to retain their queue position through 2013; 2) extend the contingency period for any project currently in the interconnection queue through 2013; and 3) establish a review procedure to drive timely decisions.<sup>458</sup> Iberdrola explains that these changes would permit Network Upgrades identified in Generator Interconnection Agreements to be subsequently classified as MVPs, and thereby removed

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<sup>454</sup> This time period is referred to as the contingency window or contingency period.

<sup>455</sup> MVP Order, 133 FERC ¶ 61,221 at P 351.

<sup>456</sup> Iberdrola Request for Rehearing at 3.

<sup>457</sup> Iberdrola Request for Rehearing at 3.

<sup>458</sup> Iberdrola Request for Rehearing at 7-8.

as a funding obligation in the interconnection agreement, through 2013. Iberdrola states that it demonstrated that the generator interconnection queue process is not sufficiently aligned with the MTEP process to ensure the timely designation of MVPs during the first couple of MTEP cycles, and that several factors can lead to a delay in the determination of whether certain Network Upgrades identified in Generator Interconnection Agreements should be MVPs.<sup>459</sup> Iberdrola also argues that the Commission did not address Iberdrola's argument that a two-year contingency period should be made permanent.

225. Iberdrola explains that while the Commission acknowledged Iberdrola's comments,<sup>460</sup> the Commission failed to distinguish Iberdrola's recommendation for a transition mechanism from arguments advocating a proposal to include a five-year funding contingency period. Iberdrola asserts that the Commission failed to address Iberdrola's proposed transition mechanism or the factual evidence provided by Iberdrola supporting it.<sup>461</sup> Iberdrola argues that although a short funding contingency period could provide the advantages discussed by the Commission in the MVP Order, it would do so only after Midwest ISO has been able to address any initial implementation problems, stakeholder delay due to unfamiliarity with the MVP designation process, issues with Midwest ISO Board of Directors review, or any other issue resulting from the start-up of a novel, comprehensive change to Midwest ISO's planning process.<sup>462</sup> Iberdrola argues that a current interconnection customer could have a proposed project precisely in the correct area because it is in the most viable renewable resource area but be severely disadvantaged because of even a month's delay in the identification of MVPs to access that appropriately-sited project. Iberdrola claims that without its proposed transition mechanism, the MVP Proposal will result in unjust, unreasonable, and discriminatory treatment of interconnection customers. Iberdrola states that the Commission's approval of a one-year funding contingency period and failure to instead require a two-year contingency period was arbitrary and capricious, ignored record evidence, and was not the result of reasoned decision-making. Iberdrola states that it provided adequate

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<sup>459</sup> Iberdrola Request for Rehearing at 6-7.

<sup>460</sup> Iberdrola Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at P 343).

<sup>461</sup> Iberdrola Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at P 350-54).

<sup>462</sup> Iberdrola Request for Rehearing at 9.



justification for the two-year contingency period, but the Commission did not consider this option.<sup>463</sup>

226. Iberdrola also claims that the Commission grossly underestimates the practical effect of having the generator interconnection process and the MTEP process entirely out of sync. Iberdrola states that because interconnection customers are not permitted to propose facilities in any out-of-cycle review, an interconnection customer may not be able to propose a Network Upgrade for the then-current MTEP process. Iberdrola states that while it agrees that a five-year contingency period is unnecessary, extending the contingency period from one year to two years will give assurance to an interconnection customer that a Network Upgrade included in a System Impact Study will receive fair consideration for MVP designation.<sup>464</sup>

227. Iberdrola also argues that a two-year funding contingency period satisfies all of the concerns and considerations the Commission identified in the MVP Order.<sup>465</sup> Iberdrola states that in evaluating the five-year funding contingency window proposed by some commenters, the Commission reasoned that a five-year period could: 1) lead to the interconnection process driving MVP considerations; 2) result in inefficient siting decisions; 3) delay the proper administration of the Midwest ISO interconnection queue; and 4) establish inappropriate timelines that eliminate reasonable cost certainty. Iberdrola states that a two-year contingency period would not create these problems.<sup>466</sup> Iberdrola argues that, in contrast, a one-year contingency period leads to the very real possibility that interconnection customers will withdraw from the interconnection queue because of the cost uncertainty and risk the one-year funding contingency period imposes on developers, resulting in the MVP designation process stalling.<sup>467</sup>

228. Finally, Iberdrola states that the Commission should require Midwest ISO to clarify that a Network Upgrade will be removed from the Generator Interconnection Agreement if the Network Upgrade is subsequently approved for inclusion in MTEP

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<sup>463</sup> Iberdrola Request for Rehearing at 11.

<sup>464</sup> Iberdrola Request for Rehearing at 11.

<sup>465</sup> Iberdrola Request for Rehearing at 11 (citing MVP Order, 133 FERC ¶ 61,221 at P 350-54).

<sup>466</sup> Iberdrola Request for Rehearing at 11-12.

<sup>467</sup> Iberdrola Request for Rehearing at 12.

Appendix A within the later of: “(1) [one or two] years<sup>468</sup>] from the execution or unexecuted filing of the [Generator Interconnection Agreement] or; (2) the date of issuance of the next annual MTEP [r]eport after a Network Upgrade is first proposed for MTEP review.”<sup>469</sup> Iberdrola argues that without its proposed clarification, Midwest ISO’s language is ambiguous and could result in an interconnection customer not being able to propose any Network Upgrade for MVP designation depending on the timing of the execution or unexecuted filing of the Generator Interconnection Agreement. For example, Iberdrola states that if the Generator Interconnection Agreement is executed four months prior to the issuance of the next MTEP report, the interconnection customer may not have resolution of the MVP status of Network Upgrades identified in its Generator Interconnection Agreement before the time constraint because Midwest ISO does not permit the interconnection customer to propose facilities in any out-of-cycle review.<sup>470</sup>

229. AWEA-WOW also request rehearing of the Commission’s approval of the one-year contingency window.<sup>471</sup> AWEA-WOW argue that there is a need for a longer contingency process since the interconnection study process is not aligned with the MTEP planning process. AWEA-WOW states that if a contingency window longer than one-year is not instituted, the result will be a large number of interconnection customers being forced to drop out of the interconnection queue because the costs of large transmission upgrades are being directly assigned to them, and the interconnection process will only become worse.<sup>472</sup> AWEA-WOW assert that without a change to the contingency window, the already problematic interconnection process will only become worse, delaying and increasing the overall cost for wind power development in the Midwest.

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<sup>468</sup> As proposed by Filing Parties in testimony, and accepted by the Commission, the first prong of the contingency window is “one year from the execution or unexecuted filing of the [Generator Interconnection Agreement].” However, Iberdrola seeks a two year funding contingency window in its rehearing request and thus indicates this language as “[one or two] years.” *See* Iberdrola Request for Rehearing at 13.

<sup>469</sup> Iberdrola Request for Rehearing at 13 (citing Filing Parties July 15, 2010 Filing, Transmittal Letter at 38, n.166). Iberdrola’s proposed revision is shown in blackline.

<sup>470</sup> Iberdrola Request for Rehearing at 13.

<sup>471</sup> AWEA-WOW Request for Rehearing at 24.

<sup>472</sup> AWEA-WOW Request for Rehearing at 25.

### 3. Commission Determination

230. We will deny the requests for rehearing. Iberdrola is correct that the determination in the MVP Order did not expressly address its requests to require an initial transitional two-year contingency period into 2013 and to require a two-year contingency period on a permanent basis. However, we address Iberdrola's arguments here and, as discussed below, we do not find its arguments persuasive. We also deny AWEA-WOW's request for rehearing.

231. We reject the request to require a transitional contingency period until 2013. As an initial matter, arguments that various factors will delay or otherwise impede the development of MVPs are speculative and unsupported. We note that Midwest ISO has already demonstrated the ability to develop and approve MVPs in a timely manner, as evidenced by the approval of the Michigan Thumb Project and the significant number of candidate MVPs already in MTEP Appendix B. Likewise, Iberdrola's claim of potential negative effects on the MVP development process and Midwest ISO's interconnection queue, and AWEA-WOW's assertion that a one-year contingency window will cause a large number of interconnection customers to drop out of the queue, are speculative and unpersuasive. Moreover we note that parties retain adequate means via Midwest ISO's various stakeholder processes and filing rights to seek changes.

232. With respect to Iberdrola's claim that the Commission failed to properly consider its request for a permanent extension of the contingency window to two years, the MVP Order found, and we continue to find, that a one-year contingency window provides enough flexibility to ensure that transmission expansion projects that may be categorized as MVPs are appropriately categorized as MVPs.<sup>473</sup> As the MVP Order found the proposed one-year contingency period to be just and reasonable, it was not necessary for the Commission to consider whether alternative proposals for longer contingency periods are superior.<sup>474</sup>

233. We reject Iberdrola's request for clarification. As explained in the Lavery Testimony, a Network Upgrade identified through the generator interconnection process

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<sup>473</sup> MVP Order, 133 FERC ¶ 61,221 at P 351.

<sup>474</sup> See, e.g., June 17, 2010 Order, 131 FERC ¶ 61,252 at P 125 & n.154 (“[H]aving found SPP's proposal just and reasonable, we need not address the merits of the alternative proposal.”); *Oxy USA*, 64 F.3d at 692 (finding that, under the FPA, as long as the Commission finds a methodology to be just and reasonable, that methodology “need not be the only reasonable methodology, or even the most accurate one”).

is not eligible for MVP cost allocation if such project is not listed in MTEP Appendix B when the Generator Interconnection Agreement is executed or filed unexecuted.<sup>475</sup> Thus, Iberdrola's example – a Generator Interconnection Agreement being executed four months prior to the issuance of the next MTEP report and the interconnection customer not having resolution of the MVP status of its transmission expansion project identified in its Generator Interconnection Agreement before the time constraint – fails to account for the fact that in order to be considered for MVP qualification, a Network Upgrade in a Generator Interconnection Agreement must have been listed in Appendix B at the time the Generator Interconnection Agreement is finalized. Thus, in Iberdrola's example, the Network Upgrade must have been included in Appendix B at the time the Generator Interconnection Agreement was finalized; if it were included in Appendix B it would, in fact, be considered for inclusion as an MVP in Appendix A of the MTEP four months later. Further, it would not be appropriate to allow the interconnection process to drive the transmission planning process in a significant way. While we agree with Iberdrola that we want to be sure that appropriate Network Upgrades receive *fair* consideration for MVP treatment, lengthening the contingency window would permit projects to sit in the queue while waiting for a better deal on funding for their transmission project.

**E. In-Service Date of SNUs and MVP Cost Allocation Eligibility**

**1. MVP Order**

234. In addition to proposing the MVP category of transmission projects, Filing Parties proposed to create the SNU classification. If a project is designated as an SNU, the interconnection customer that originally funded such project that is found to benefit other interconnection customers that come later would be eligible for contributions from the late-coming interconnection customers. To be considered for SNU cost-sharing, a project must: 1) be identified in a Generator Interconnection Agreement that is effective after July 15, 2010; 2) have an actual in-service date that is less than five years from the date of the publication of a System Impact Study that identifies the new transmission as being eligible for contributions; and 3) have been determined by Midwest ISO to benefit a later-interconnected interconnection customer. Although various parties opposed the SNU category or proposed changes to it, the Commission accepted the SNU proposal as just and reasonable.<sup>476</sup>

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<sup>475</sup> Filing Parties July 15, 2010 Transmittal Letter, Laverty Test. at 33-34.

<sup>476</sup> MVP Order, 133 FERC ¶ 61,221 at P 336.

## 2. Requests for Rehearing

235. E.ON reiterates its challenge to the SNU proposal by asserting that the five-year period within which a project must have an actual in-service date is not just and reasonable. According to E.ON, Filing Parties supported the five-year period on the strength of the idea that five years is “comparable to the near-term planning horizon,” which is the planning horizon that takes into account “generation additions that can be reasonably anticipated.”<sup>477</sup> In its request for rehearing, E.ON asserts that it demonstrated why a ten-year period for the availability of SNU cost recovery is necessary. E.ON states that it previously explained that SNUs are a cost allocation concept, not a planning concept, and that the two are not comparable. E.ON states that the network upgrades an interconnecting generator must fund will have an asset life much longer than five years (likely 30 to 40 years) and will provide benefits to regional participants, including other interconnecting generators, for many more than five years. E.ON also contrasts the five-year period of SNUs with Filing Parties’ decision to calculate economic benefits of a transmission facility on a 20-year period for purposes of determining whether the benefit-to-cost ratio in Criterion 1 is satisfied. Accordingly, E.ON requests that the Commission reconsider its determination, particularly given that the Interim Cost Allocation Proposal was made permanent in the MVP Order.<sup>478</sup> E.ON states that such a finding would be consistent with the Commission’s rationale in the MVP Order that the SNU proposal will reduce the financial burden to interconnecting customers who are first-movers.

## 3. Commission Determination

236. We reject E.ON’s assertion that the Commission did not justify its finding that a five-year period within which a project must have an actual in-service date is just and reasonable. We continue to hold that it is logical for an SNU to have a temporal requirement that matches Midwest ISO’s five-year planning horizon. We find that the five-year planning horizon is an appropriate time span outside of which the assertion that an interconnecting generator truly benefits from the SNU and not another potential transmission expansion project constructed in that time no longer applies.

237. In addition, a five-year period appropriately balances the financial risk to future generation developers by ensuring that they are not seeing cost responsibility for an unreasonable share of pre-existing facilities.

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<sup>477</sup> E.ON Request for Rehearing at 12-13 (citing Filing Parties July 15, 2010 Filing, Transmittal Letter at 40).

<sup>478</sup> E.ON Request for Rehearing at 15.

## V. MVP Usage Rate

### A. MVP Order

238. In the MVP Order, the Commission found the proposed MVP rate design to be just and reasonable and accepted the proposed usage charge. It determined that a significant portion of MVP benefits will likely accrue during off-peak demand periods and, therefore, a usage-based cost allocation methodology is consistent with cost causation principles.<sup>479</sup> The Commission also stated that a usage charge would more appropriately reflect MVP benefits by allowing costs to be allocated during all hours of the year and based on usage over time to reflect changes in MVP beneficiaries.<sup>480</sup> In addition, the Commission rejected arguments that the proposed usage charge would unfairly impact high load-factor customers, finding that the protestors did not “explain how customers that merely hold reserved transmission capacity could benefit from MVPs without actually scheduling energy for delivery using a reservation.”<sup>481</sup>

239. With regard to alternate cost allocation methodologies (e.g., a demand charge or two-part rate design), the Commission found that it need not consider them, stating that Filing Parties must prove that the proposed rate is just and reasonable, not that it is the best rate.<sup>482</sup> The Commission stated that protestors did not demonstrate that Commission precedent prevents the use of a usage charge for the recovery of transmission costs and noted that the Commission has accepted usage charges in other contexts.<sup>483</sup> The Commission also found that several factors discussed by commenters (e.g., Midwest

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<sup>479</sup> MVP Order, 133 FERC ¶ 61,221 at P 383 (citing Filing Parties July 15, 2010 Filing, Curran Test. at 12-13).

<sup>480</sup> MVP Order, 133 FERC ¶ 61,221 at P 383.

<sup>481</sup> MVP Order, 133 FERC ¶ 61,221 at P 386.

<sup>482</sup> MVP Order, 133 FERC ¶ 61,221 at P 384 (citing, e.g., *New England Power Co.*, Opinion No. 352, 52 FERC ¶ 61,090, at 61,336 (1990), *aff'd sub nom. Town of Norwood v. FERC*, 962 F.2d 20 (D.C. Cir. 1992) (*Town of Norwood*)).

<sup>483</sup> MVP Order, 133 FERC ¶ 61,221 at P 384 (citing, e.g., *New York Indep. Sys. Operator, Inc.*, 125 FERC ¶ 61,068, at P 101 (2008) (October 16, 2008 Order), *order on reh'g*, 126 FERC ¶ 61,320 (2009) (March 21, 2009 Rehearing Order)).

ISO's precise method of selecting or sizing projects utilizing measures of peak demand) were not relevant under the proposed beneficiaries-pay approach to cost allocation.<sup>484</sup>

240. Finally, the Commission found that the MVP usage charge does not violate the Commission's requirement that certain transmission rates be posted on Midwest ISO's OASIS in advance. The Commission stated that this requirement applies to transmission products, but the MVP Proposal merely recovers transmission revenue requirements and does not create a new transmission product.<sup>485</sup>

## **B. Requests for Rehearing**

### **1. Design of MVP Usage Rate**

241. Hoosier-SIPC argue that the Commission erred in accepting the MVP usage charge because the charge reflects neither cost causation nor the distribution of MVP benefits. Contrary to the Commission's argument that "a significant portion of MVP benefits will likely accrue during off-peak demand periods,"<sup>486</sup> Hoosier-SIPC contend that nothing in the record indicates that off-peak usage will be greater for MVPs than for other transmission facilities. Moreover, they maintain that, even if the Commission is correct (i.e., that off-peak usage will be greater for MVPs than for other transmission facilities) the proposed MVP charge would not reflect a proper distribution of MVP benefits because MVP costs would be assigned based on usage of the entire Midwest ISO system rather than only MVP facilities. Hoosier-SIPC claim that, as a result, entities that do not use MVPs at all would pay more, based on their relative use of non-MVP transmission facilities in Midwest ISO, than entities that use MVPs heavily. Instead, they assert that generators requiring MVPs and entities using MVPs most heavily during peak periods should pay more than entities that use the lines to a lesser degree because MVPs will be sized according to the capacity of new generation and the amount of energy that the lines will be expected to carry during peak usage.

242. Industrial Customers argue that the Commission erred by finding that Filing Parties have met the burden of proving the proposed usage charge just and reasonable.<sup>487</sup>

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<sup>484</sup> MVP Order, 133 FERC ¶ 61,221 at P 385-86.

<sup>485</sup> MVP Order, 133 FERC ¶ 61,221 at P 444.

<sup>486</sup> Hoosier-SIPC Request for Rehearing at 21 (citing MVP Order, 133 FERC ¶ 61,221 at P 383).

<sup>487</sup> Industrial Customers Request for Rehearing at 19 (citing MVP Order, 133 FERC ¶ 61,221 at P 383).

Industrial Customers disagree with the Commission's argument that the proposed usage charge will "reflect MVP benefits by allowing costs to be allocated during all hours of the year," claiming that transmission systems always provide benefits in all hours of the year and there is nothing unique about MVPs as opposed to other transmission projects.<sup>488</sup> They assert that all transmission projects that deliver power from resources to loads satisfy documented energy policy mandates, and there is no evidence that renewable portfolio standards are different from other policy mandates (e.g., existing environmental regulations) or will alter fundamental laws of engineering or system planning. They maintain that all transmission facilities are sized to meet expected peak demand, and no evidence to the contrary has been presented in this proceeding.

243. Illinois Commission and OMS<sup>489</sup> argue that the Commission erred in finding that MVP benefits accrue in all hours of the year to justify the proposed usage charge. They claim that MVP benefits are not based on the units of energy withdrawn by loads from the Midwest ISO system, noting that some loads may never use an MVP to withdraw electricity. They assert that, while such loads may receive benefits due to a more robust transmission network, those reliability benefits are unrelated to a load's usage or the power that flows over MVPs. Since MVP benefits are not necessarily related to MWhs of consumption, and MWhs of consumption are not necessarily related to the usage of any MVP facility, Illinois Commission and OMS conclude that the Commission erred in accepting the proposed usage charge.<sup>490</sup>

244. Industrial Customers maintain that the proposed usage charge would result in undue prejudice and discrimination by disproportionately shifting substantial MVP costs from low load-factor customers to high load-factor customers. They argue that there is no evidence that high load-factor customers are disproportionately responsible for renewable portfolio standard costs nor that the proposed cost allocation is roughly commensurate with the benefits that they will receive from such standards. They state that Commission precedent recognizes that rates should produce revenues for each customer class that match, as closely as practicable, the cost to serve each class or

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<sup>488</sup> Industrial Customers Request for Rehearing at 19 (citing MVP Order, 133 FERC ¶ 61,221 at P 383).

<sup>489</sup> Kentucky Commission abstains from OMS' request for rehearing regarding the MVP usage charge, and South Dakota Commission and Wisconsin Commission do not join in OMS' request for rehearing of this issue.

<sup>490</sup> Illinois Commission Request for Rehearing at 32; OMS Request for Rehearing at 10.



individual customer.<sup>491</sup> In this case, they claim that well-established Commission precedent recognizes that high load-factor customers as a class make the most efficient use of the transmission and generation system and impose the least burden in terms of system planning.<sup>492</sup> They claim that the proposed usage charge results in cross subsidization that does not reflect the cost of serving high load-factor customers and is contrary to Commission precedent. In particular, they contend that, by shifting costs to high load-factor customers, the proposed usage charge represents a reversal of the Commission's cost-based reasoning that it has consistently applied. Industrial Customers add that the Commission erred by making no attempt to quantify or investigate the MVP rate's impact on ultimate customers.<sup>493</sup>

## 2. Alternative Rate Designs

245. Industrial Customers claim that the Commission's observation that protestors have not demonstrated that Commission precedent prevents the use of a usage charge does not amount to the substantial evidence needed to override long-established precedent of relying on a demand-based allocator. Industrial Customers contend that the general principle among system planners and Commission precedent is that "systems are typically designed to meet the maximum system peak," however defined.<sup>494</sup> They assert that the use of monthly coincident peak demand as the default allocation factor for transmission system costs was based on a reasoned policy position that has been repeatedly affirmed by the courts and the Commission in a variety of contexts.<sup>495</sup>

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<sup>491</sup> Industrial Customers Request for Rehearing at 21 (citing *Alabama Electric Cooperative, Inc. v. FERC*, 684 F.2d 20, 23 & 27 (D.C. Cir. 1982)).

<sup>492</sup> Industrial Customers Request for Rehearing at 21 (citing *ELCON v. FERC*, 747 F.2d 1511, 1515-16 (D.C. Cir. 1984)).

<sup>493</sup> Industrial Customers Request for Rehearing at 22 (citing *North Carolina v. FERC*, 584 F.2d 1003, 1014 (D.C. Cir. 1978)).

<sup>494</sup> Industrial Customers Request for Rehearing at 18 (citing *Tex-La Electric Cooperative of Texas Inc.*, 69 FERC ¶ 61,269, at 62,035 (1994) (*Tex-La Electric Cooperative of Texas*)).

<sup>495</sup> Industrial Customers Request for Rehearing at 18 (citing *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048, *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub*

(continued...)

According to Industrial Customers, the Commission's approval of a usage charge for New York Independent System Operator, Inc. (NYISO) was based on case-specific circumstances that are not applicable here.<sup>496</sup> Further, Industrial Customers maintain that the Commission has frequently rejected utility proposals to use allocation factors other than monthly coincident peak demand.<sup>497</sup> Industrial Customers conclude that, notwithstanding any evidence presented in this proceeding, decisions of both the courts of appeals and the Commission have held that the Commission bears the burden of explaining the reasonableness of any departure from long-standing practice, and any facts underlying its explanation must be supported by substantial evidence.<sup>498</sup>

246. Illinois Commission and OMS argue that the Commission erred in dismissing the superiority of a demand-based charge as irrelevant. They maintain that the primary cause of the size and design of transmission facilities is the capacity value of interconnecting generators, and therefore, the most objective billing determinant would be the peak generating capacity forecasted to be delivered over MVPs. They assert that loads could be assigned costs based on "their demand at the hour of peak generating output from generators interconnected to MVPs," as such data are readily available.<sup>499</sup> Illinois Commission and OMS add that the Commission erred in characterizing a demand charge as one that has to be assessed up front and that could not change over time. They state that demand charges may be assessed based on daily, weekly, or monthly peak load to

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*nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002)). They claim that the Pro Forma Open Access Transmission Tariff is based on general findings that the use of monthly coincident peak demand is the appropriate default for the allocation of transmission system costs. Industrial Customers Request for Rehearing at 17.

<sup>496</sup> They state that the Commission's findings in NYISO were based on the previous existence of state-sponsored energy allocation schemes and embedded software designs that would have rendered any transition to a different allocation method difficult, expensive, and potentially futile in the absence of larger reforms. Industrial Customers Request for Rehearing at 20 (citing October 16, 2008 Order, 125 FERC ¶ 61,068).

<sup>497</sup> Industrial Customers Request for Rehearing at 20 (citing *Tex-La Electric Cooperative of Texas*, 69 FERC ¶ 61,269).

<sup>498</sup> Industrial Customers Request for Rehearing at 18-19 (citing *Columbia Gas Transmission Corp. v. FERC*, 628 F.2d 578, 586 (D.C. Cir. 1979) (*Columbia Gas*)).

<sup>499</sup> Illinois Commission Request for Rehearing at 33; OMS Request for Rehearing at 11.

reflect the variable benefits derived from withdrawing energy from the Midwest ISO transmission system. In addition, Illinois Commission and OMS contend that the Commission erred in accepting the proposed usage charge based on a comparison to a demand charge. They claim that the Commission asserted that it need not consider alternatives to the proposed usage charge but justified the usage charges based on its character relative to a demand charge.<sup>500</sup>

247. OMS notes that, in its previous comments, it recommended that the Commission direct Midwest ISO and its stakeholders consider the possibility of a two-part charge that incorporates both energy and demand concepts and discussed the potential benefits of such a rate design.<sup>501</sup> OMS recommends that the Commission re-hear this issue and direct Midwest ISO to assemble its stakeholders to reconsider this matter.

### **3. Inter-Regional Coordination**

248. Exelon argues that the Commission erred in accepting the MVP Proposal because the MVP rate is inconsistent with Commission precedent and the Midwest ISO Tariff, which require that projects in Midwest ISO that affect customers in PJM be coordinated under the Midwest ISO-PJM Joint Operating Agreement.<sup>502</sup> Exelon contends that the Commission established this policy when it required Midwest ISO, PJM, and their transmission owners to develop a coordinated planning proposal for transmission facilities in one RTO that would affect customers in the other,<sup>503</sup> and this policy was codified in law when the Commission accepted the proposed revisions to the Midwest ISO and PJM tariffs. Exelon claims that Midwest ISO has not sought to amend the Joint Operating Agreement, which requires projects that affect both RTOs to be handled through the process set forth in the Joint Operating Agreement. Exelon adds that this requirement is not limited to cross-border charges and claims that the Commission failed to address this issue in the MVP Order. It maintains that the MVP Proposal improperly establishes a new category of transmission projects under the MTEP without

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<sup>500</sup> See, e.g., Illinois Commission Request for Rehearing at 33 (citing MVP Order, 133 FERC ¶ 61,221 at P 383-84).

<sup>501</sup> OMS Request for Rehearing at 11-12 (citing OMS September 10, 2010 Comments, Docket No. ER10-1791-000, at 9).

<sup>502</sup> Joint Operating Agreement Between the Midwest Independent Transmission System Operator, Inc., And PJM Interconnection, L.L.C. (Joint Operating Agreement).

<sup>503</sup> Exelon Request for Rehearing at 8 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 109 FERC ¶ 61,168 (2004) (November 18, 2004 Order)).

consideration of the impact of those projects on PJM customers.<sup>504</sup> Exelon concludes that the Commission has not attempted to explain this apparent change of policy and, by accepting a rate filing that violates the Midwest ISO Tariff, has violated the filed rate doctrine.

249. Exelon argues that, in accepting the MVP Proposal, the Commission allowed Midwest ISO to ignore the impact on PJM operations and reliability that will result from Midwest ISO's plan to integrate thousands of MWs of wind into its system. Exelon asserts that, if a package of projects planned in Midwest ISO would cause reliability violations or disrupt the market structure in PJM, the PJM facilities needed to correct the problems must be in place at the same time as the Midwest ISO facilities. Exelon states that it previously demonstrated that lack of coordination is already causing a marked deterioration in operations at the seam between the two RTOs,<sup>505</sup> and absent coordination here, the MVP Proposal will aggravate these issues and could ultimately threaten reliability. Exelon adds that it should not have to file a complaint to require Midwest ISO to obey what is already the law.

250. Midwest ISO argues that the MVP charge is outside of the scope of, and as such is not contrary to, the existing Midwest ISO-PJM Joint Operating Agreement. It explains that the Joint Operating Agreement requires joint study only for specific types of projects (e.g., in response to transmission service requests), which would not include MVPs.<sup>506</sup> It claims that, in a prior Joint Operating Agreement amendment filing, Midwest ISO and PJM agreed that the Joint Operating Agreement is not the exclusive means of addressing cost allocation for projects of one RTO that benefit the other, stating that "each RTO

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<sup>504</sup> Exelon states that, while the Commission may intend to address this issue in the upcoming final rule instead of this proceeding, the Commission's finding that the MVP Proposal is consistent with existing Commission policies is incorrect. Exelon Request for Rehearing at 8 (citing MVP Order, 133 FERC ¶ 61,221 at n.5).

<sup>505</sup> Exelon states that an unacceptable increase in Transmission Loading Relief events and so-called "switching events" (i.e., RTO orders to open or close particular circuit breakers) has occurred on the Commonwealth Edison Company (ComEd) system in the last two years as wind resources in Midwest ISO have increased. Exelon Request for Rehearing at 9 (citing Exelon November 2, 2010 Answer, Docket No. ER10-1791-000, at 3-6).

<sup>506</sup> Midwest ISO Request for Rehearing at 4-5 (citing Joint Operating Agreement at §§ 9.3.3, 9.3.4).

remains able to unilaterally construct a network upgrade project that . . . may have benefits to the other RTO without [Joint Operating Agreement] cost sharing.”<sup>507</sup>

#### **4. OASIS and After-the-Fact Charges**

251. AWEA-WOW request rehearing of the Commission’s decision not to require advance posting on OASIS of MVP usage charges. They claim that, even if the MVP Proposal does not create a new transmission product, it clearly represents an extension of the rate for base transmission services because proposed Schedule 26-A creates an MVP rate that will be charged in addition to any charges under existing Schedules 7, 8, and 9.<sup>508</sup> They argue that the fact that Midwest ISO proposed a new rate in Schedule 26-A, rather than amending the existing schedules to incorporate the MVP charge, should not absolve Midwest ISO from posting the charges in advance on OASIS. AWEA-WOW contend that, by failing to post MVP charges in advance, the proposal results in a lack of transparency that will impact the competitiveness of independent wind generators, is contrary to Commission precedent,<sup>509</sup> and is unjust and unreasonable.

252. AWEA-WOW request that the Commission require these transmission charges to be posted in a more transparent fashion by directing Midwest ISO to demonstrate how the MVP rate will be calculated and posted in advance on OASIS. They describe events at a recent stakeholder meeting, stating that Midwest ISO’s commitment to post estimated MVP rates on OASIS in advance is insufficient, as market participants must know exact transmission service prices well in advance in order to make prudent business decisions. They state that, while Midwest ISO will know the numerator for developing the MVP rate in advance, it will not know the billing determinants for the denominator of the rate

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<sup>507</sup> Midwest ISO Request for Rehearing at 5 (citing PJM and Midwest ISO January 28, 2009 Filing, Docket No. ER05-6-108, at 6).

<sup>508</sup> AWEA-WOW Request for Rehearing at 21 (citing Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. MM, § 4.a.i).

<sup>509</sup> In particular, AWEA-WOW contend that the proposal violates the OASIS posting requirements promulgated in Order No. 889, the requirement that transmission system information be available on a timely basis in Order No. 888, and the basic transparency principle of Order No. 890. AWEA-WOW Request for Rehearing at 22 (citing *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996), *order on reh’g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049, *reh’g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997); Order No. 888, FERC Stats. & Regs. ¶ 31,036; Order No. 890, FERC Stats. & Regs. ¶ 31,241).

until after each month. AWEA-WOW suggest that Midwest ISO cure this deficiency by applying the rate for the current month based on the previous month's actual billing determinants so that it can post the MVP rate in advance.<sup>510</sup>

### C. Commission Determination

253. We affirm the Commission's findings that the MVP usage charge will result in just and reasonable rates, and accordingly, we will deny the requests for rehearing. As the Commission explained in the MVP Order, "a significant portion of MVP benefits will likely accrue during off-peak demand periods and, therefore, a usage-based cost allocation methodology is consistent with cost causation principles."<sup>511</sup> In particular, according to Filing Parties' witness Ms. Curran, the benefits of market-wide economic dispatch are often more significant during off-peak hours, because fewer generation resources are required and more opportunity exists to use generation in one region to serve load in another.<sup>512</sup> The Commission also found that MVPs will produce benefits by allowing loads "to satisfy documented energy policy mandates or laws (e.g., enabling an increased reliance on renewable resources) that are not necessarily associated with peak demand periods and by producing economic benefits (e.g., reducing production costs) that occur throughout the year."<sup>513</sup> Moreover, the proposed usage charge allocates costs based on usage over time, so that the allocation of MVP costs reflects changes in MVP beneficiaries over time.<sup>514</sup>

254. We are not persuaded that MVP benefits are associated only with peak hours or that MVP costs should be allocated based only on peak usage. Contrary to Hoosier-SIPC's argument that there is no evidence that off-peak usage of MVPs will differ from other transmission facilities, we find that there is substantial evidence (e.g., Ms. Curran's testimony) that MVP benefits will accrue during both peak and off-peak periods. Among other things, we note that, according to Ms. Curran, while many local transmission

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<sup>510</sup> They claim that such a rate design would smooth the rate from month-to-month and, if required, an annual true-up could be applied to avoid any rate volatility and unpredictability. AWEA-WOW Request for Rehearing at 24.

<sup>511</sup> MVP Order, 133 FERC ¶ 61,221 at P 383.

<sup>512</sup> MVP Order, 133 FERC ¶ 61,221 at P 383 (citing Filing Parties' July 15, 2010 Filing, Curran Test. at 12-13).

<sup>513</sup> MVP Order, 133 FERC ¶ 61,221 at P 383.

<sup>514</sup> MVP Order, 133 FERC ¶ 61,221 at P 383.

facilities were constructed to meet the peak demand of the area in which they are located, regional facilities such as MVPs “tend to be utilized throughout the year with a focus on energy delivery across the footprint during periods in addition to peak demand.”<sup>515</sup>

Further, in order to accept the MVP usage rate, the Commission need not find that MVPs are unique or otherwise distinguish MVPs from other categories of transmission projects that are allocated based on peak demand.<sup>516</sup>

255. Therefore, arguments noting similarities between MVPs and other transmission projects whose costs are allocated using demand charges, such as Industrial Customers’ argument that other transmission projects allocated via demand charges may similarly produce benefits during off-peak periods, do not render the MVP usage charge unjust and unreasonable. Even though the Commission need not distinguish MVPs from other categories of transmission projects, we find that there are distinctions and disagree with Industrial Customers’ argument that the documented energy policy laws or mandates satisfied by Criterion 1 MVPs are no different from other policy mandates. As Ms. Curran explained, if wind generation is used to help meet state renewable portfolio standards, “only a small percentage of the energy generated by wind will occur during periods of peak demand, i.e., the small percentage of hours that drive demand-type charges.”<sup>517</sup>

256. In addition, while Hoosier-SIPC and Industrial Customers argue that MVPs will be sized based on the amount of energy that the lines will be expected to carry during peak demand, we note that Midwest ISO’s transmission planning process does not consider only peak demand, since the MTEP reliability planning methodology also considers off-peak load.<sup>518</sup> Further, as explained in the MVP Order, while Midwest

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<sup>515</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 12.

<sup>516</sup> In the MVP Order, the Commission recognized that “alternate cost allocation methodologies could allocate MVP costs in a manner that is consistent with the Commission’s cost causation principles,” but explained that Filing Parties must prove only that the proposed rate is just and reasonable, not that it is the best rate. MVP Order, 133 FERC ¶ 61,221 at P 384 (citing, *e.g.*, Opinion No. 352, 52 FERC at 61,336, *aff’d sub nom. Town of Norwood*, 962 F.2d 20 (requiring only that the Commission make a reasoned decision based upon substantial evidence in the record)).

<sup>517</sup> Filing Parties July 15, 2010 Filing, Curran Test. at 12.

<sup>518</sup> The MTEP baseline reliability assessment methodology considers critical system load conditions, including modeling of peak and off-peak cases, as well as off-peak dynamics evaluations. For example, in MTEP10, analyses were performed using 2015 summer peak, shoulder peak, and light load powerflow models. Midwest ISO,

(continued...)

ISO's method of sizing transmission projects utilizing measures of peak demand could be relevant under alternative cost allocation methodologies (e.g., a demand charge), such information does not inform our understanding of how benefits accrue as MVP facilities are used over time and, therefore, is not relevant to the usage charge proposed here.<sup>519</sup>

257. We disagree with Hoosier-SIPC's, Illinois Commission's and OMS' argument that the MVP usage charge does not reflect MVP beneficiaries because the MVP charge allocates costs to loads that, according to these parties, may never use MVP facilities. While the benefits received may be more appreciated at different times by different customers with respect to different groups of transmission projects, these benefits are nevertheless experienced by all Midwest ISO members. Allocating MVP costs based on use of the regional transmission system, rather than on use of specific MVP facilities, reflects the integrated planning and operation of the transmission system that includes MVPs and other transmission projects and the broad, regional benefits of MVPs as they accrue throughout the Midwest ISO region. Put another way, we find that a load's relative use of the regional transmission system during all hours of the year is indicative of the degree to which it benefits from MVP facilities. If Midwest ISO were to instead exempt from MVP charges loads that do not schedule transactions over MVPs during certain periods, those loads could enjoy MVP benefits without paying their full share of MVP costs.

258. We find Illinois Commission's and OMS' claim that there is no relationship between MVP benefits and MWhs of consumption to be without merit. As discussed in the MVP Order, MVPs produce benefits that occur throughout the year, not just during peak periods, and the MVP usage rate reflects these benefits as they accrue.<sup>520</sup> For example, a Midwest ISO load that heavily relies on the Midwest ISO transmission system to satisfy documented energy policy mandates or laws and enjoys economic and

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*Transmission Expansion Plan 2010*, App. E1: Reliability Planning Methodology at § R1.3.2, available at [http://www.midwestmarket.org/publish/Document/5648df\\_12c97e3f74e\\_-7f2e0a48324a?rev=1](http://www.midwestmarket.org/publish/Document/5648df_12c97e3f74e_-7f2e0a48324a?rev=1) (citing Midwest ISO, *Business Practices Manual, Transmission Planning, Manual No. 020*, at § 3.2.2 (Nov. 20, 2010) available at <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>).

<sup>519</sup> MVP Order, 133 FERC ¶ 61,221 at P 385.

<sup>520</sup> MVP Order, 133 FERC ¶ 61,221 at P 383 (citing Filing Parties July 15, 2010 Filing, Curran Test. at 9-10).



reliability benefits from MVPs would pay higher MVP usage charges than an external load that rarely uses the Midwest ISO system and thereby accrues fewer MVP benefits.

259. As for Industrial Customers' argument that the proposed usage charge would cause cross subsidization and be unduly discriminatory by charging high load-factor customers for part of the cost to serve low load-factor customers, we disagree. As explained in the MVP Order, allocating MVP costs to parties based on their use of transmission reservations (i.e., to those parties with relatively high load factors) accords with cost causation principles,<sup>521</sup> and we are not persuaded that the MVP usage charge will result in cross subsidization or undue discrimination toward high load-factor customers. As for Industrial Customers' claim that high load-factor customers make more efficient use of the transmission system as compared to low load-factor customers, we find that that claim is not relevant to determining whether the MVP rate is consistent with cost causation principles. As explained in the MVP order, arguments regarding whether the proposed rate creates desirable incentives for certain market behavior (e.g., incentives to increase customers' load factors) does not demonstrate that the MVP rate is unjust and unreasonable.<sup>522</sup>

260. We disagree with claims that Commission precedent requires that MVP charges be assessed on a demand basis. And, we disagree with Industrial Customers that the Commission's acceptance of MISO's proposed usage charge is a departure from long-standing practice of using demand charges.<sup>523</sup> As discussed above, we are not persuaded that peak demand necessarily reflects all MVP benefits, or that Midwest ISO's consideration of transmission projects based, in part, on peak demand is indicative of MVP beneficiaries. Moreover, while the Commission has accepted demand charges to recover transmission costs in other proceedings, as Industrial Customers admit, "the Commission has not foreclosed consideration of other alternatives."<sup>524</sup> For instance, while the Commission accepted a 12-month coincident peak allocation method for pricing network service in Order No. 888, the Commission also recognized "that alternative allocation proposals may have merit and welcome[d] their submittal," adding that such proposals "will be evaluated on a case-by-case basis and decided on their

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<sup>521</sup> MVP Order, 133 FERC ¶ 61,221 at P 386.

<sup>522</sup> MVP Order, 133 FERC ¶ 61,221 at P 386.

<sup>523</sup> Industrial Customers Request for Rehearing at 19 (citing *Columbia Gas*, 628 F.2d at 586).

<sup>524</sup> Industrial Customers Request for Rehearing at 17.

merits.”<sup>525</sup> As noted in the MVP Order, the Commission has accepted usage charges in other proceedings, including for Transmission Access Charges in California Independent System Operator Corp. (CAISO) and Regulated Reliability Project charges in NYISO.<sup>526</sup> While Industrial Customers point out that the Commission’s findings in the NYISO proceeding reflected case-specific circumstances – as did the Commission’s findings in the CAISO proceeding and as do our findings here – the NYISO and CAISO proceedings demonstrate that, on a case-by-case basis, the Commission has accepted usage charges to recover the costs of transmission facilities notwithstanding objections similar to those raised in this proceeding.<sup>527</sup>

261. Having affirmed the MVP Order’s finding that the MVP usage rate is just and reasonable, we need not consider alternate cost allocation methodologies here. As the Commission explained, Filing Parties must prove only that the proposed rate is just and reasonable, not that it is the best rate,<sup>528</sup> and Filing Parties have met that burden. As such, we will not address Illinois Commission’s and OMS’ arguments describing the

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<sup>525</sup> Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,736.

<sup>526</sup> MVP Order, 133 FERC ¶ 61,221 at P 384 (citing October 16, 2008 Order, 125 FERC ¶ 61,068 at P 101, March 21, 2009 Rehearing Order, 126 FERC ¶ 61,320). *See also California Indep. Sys. Operator Corp.*, 109 FERC ¶ 61,301 (2004), *order on reh’g*, 111 FERC ¶ 61,337 at P 72-88 (2005) (June 2, 2005 Rehearing Order).

<sup>527</sup> For example, in the NYISO proceeding, as here, commenters discussed whether charging high load-factor customers more than low load-factor customers for reliability upgrades under a usage charge would be inherently objectionable, but the Commission was unconvinced that recovering costs for new transmission facilities on a usage basis would be unreasonable. October 16, 2008 Order, 125 FERC ¶ 61,068 at P 99, 101. *See also* Niagara Mohawk Power Corp. July 9, 2008 Protest, Docket No. OA08-52-001, at 6-7; Multiple Intervenors July 7, 2009 Protest, Docket No. OA08-52-001, at 5-6; NYISO July 24, 2008 Answer, Docket No. OA08-52-001, at 13. In the CAISO proceeding, commenters asserted that the need for transmission investment is driven by peak system usage, and the Commission found that there “was specific evidence that peak use did not determine investment in capacity” and concluded that “precedent does not require that off-peak users may never pay the same MWh rate as on-peak users under any circumstances.” June 2, 2005 Rehearing Order, 111 FERC ¶ 61,337 at P 62-64, 69-71, 86-88.

<sup>528</sup> MVP Order, 133 FERC ¶ 61,221 at P 384 (citing, *e.g.*, Opinion No. 352, 52 FERC at 61,336, *aff’d sub nom. Town of Norwood*, 962 F.2d 20 (requiring only that the Commission make a reasoned decision based upon substantial evidence in the record)).

merits of demand charges, nor OMS' support for a two-part charge. As for Illinois Commission's and OMS' argument that the Commission contradicted itself by dismissing alternatives to the MVP usage charge but accepting the MVP usage charge based on a comparison to a demand charge, we disagree. In the MVP Order, the Commission found that the MVP rate design would appropriately reflect the incurrence of MVP benefits based on substantial record evidence (e.g., by allocating costs during all hours of the year and reflecting beneficiary changes over time). While the Commission drew parallels to demand charges in order to demonstrate the appropriateness of the MVP usage rate,<sup>529</sup> the Commission specifically refrained from making any findings regarding whether alternate rate methodologies could allocate MVP charges consistent with cost causation principles.<sup>530</sup> For similar reasons, we disagree with Exelon's argument that the MVP Proposal violates Commission policy requiring that projects in Midwest ISO that affect customers in PJM be coordinated under the Joint Operating Agreement.

262. In addition, we find Exelon's assertion that the MVP filing violates requirements regarding inter-regional transmission planning in the Midwest ISO-PJM Joint Operating Agreement under the Midwest ISO Tariff to be without merit. It is unclear which provisions Exelon believes to have been violated, as Exelon's request for rehearing does not provide any specific language in the Joint Operating Agreement that is allegedly contrary to the MVP Proposal. While the Joint Operating Agreement contains provisions regarding the joint study and/or inter-regional cost allocation of transmission projects, many of the requirements refer to specific types of transmission expansion projects (e.g., Cross-Border Baseline Reliability Projects) that do not include MVPs. The fact that the Joint Operating Agreement is limited in scope does not suggest that the MVP Proposal circumvents it or otherwise violates the filed rate doctrine. To the extent that the Joint Operating Agreement's more general provisions could apply to MVPs, we are not persuaded that the MVP Proposal would inappropriately prevent their application.<sup>531</sup> As

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<sup>529</sup> See, e.g., MVP Order, 133 FERC ¶ 61,221 at P 383 (citing Filing Parties July 15, 2010 Filing, Curran Test. at 12-13).

<sup>530</sup> MVP Order, 133 FERC ¶ 61,221 at P 384.

<sup>531</sup> For example, the Joint Operating Agreement provides that Midwest ISO and PJM will each engage in transmission planning activities, including expansion plans, and "agree to share, on an ongoing basis, information that arises in the performance of such single party planning activities as is necessary or appropriate for effective coordination between the Parties, including . . . the identification of proposed transmission system enhancements that may affect the Parties' respective systems." Joint Operating Agreement at § 9.3.1. The MVP Proposal would not prevent such information sharing from including MVP plans, if needed.

such, we find Exelon's argument that Midwest ISO could unilaterally build MVPs that cause reliability violations or disrupt the market structure in PJM to be unfounded.

263. Finally, we disagree with AWEA-WOW's argument that the MVP usage charge represents an extension of the rate for base transmission services such that the MVP usage rate must be posted on OASIS in advance. The OASIS posting requirement applies to "transmission products,"<sup>532</sup> which includes services such as firm and non-firm point-to-point transmission services and network integration transmission service (i.e., Schedules 7, 8, and 9) in Midwest ISO. As stated in the MVP Order, the MVP usage rate in Schedule 26-A does not create a new transmission product such that the OASIS posting requirement would apply, and we are not persuaded on rehearing that Schedule 26-A should be viewed as being akin to Schedules 7, 8, and 9. While AWEA-WOW are correct that charges under Schedule 26-A are assessed "in addition to any charges under Schedules 7, 8, and 9 . . . for base transmission service,"<sup>533</sup> we note that this language is not unique to Schedule 26-A,<sup>534</sup> and the Midwest ISO Tariff actually provides that any charges under Schedule 26-A "shall be in addition to any charges under Schedules 7, 8, 9, and 26."<sup>535</sup> The fact that the various charges are summed does not change the nature of each rate or otherwise suggest that they should be viewed together as a single rate for base transmission services, as AWEA-WOW suggest. Rather, Schedules 26 and 26-A merely recover transmission revenue requirements and, unlike Schedules 7, 8, and 9, are not associated with proffered transmission products such that the OASIS posting requirement would apply. Nonetheless, Midwest ISO provides advance posting of charges under Schedule 26,<sup>536</sup> and as stated in the MVP Order, we encourage Midwest

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<sup>532</sup> The Commission requires transmission providers to post prices "associated with all transmission products offered to transmission customers." MVP Order, 133 FERC ¶ 61,221 at P 444 (citing 18 C.F.R. § 37.69(c)(1) (2010)).

<sup>533</sup> AWEA-WOW Request for Rehearing at 21.

<sup>534</sup> For example, Schedule 26 (Network Upgrade Charge from Transmission Expansion Plan) provides that any charges assessed therein "shall be in addition to any charges under Schedules 7, 8 and 9." Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2194.

<sup>535</sup> Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 2199A (emphasis added).

<sup>536</sup> See, e.g., Midwest ISO OASIS, Point to Point Transmission Service Rates, available at <http://oasis.midwestiso.org/documents/miso/Posting%202011%20MISO%20Feb%202011.xls>

ISO to continue working with its stakeholders to develop mechanisms to provide advance notice of MVP charges under Schedule 26-A.<sup>537</sup>

## **VI. Application of MVP Usage Rate to Export Transactions, Wheel-Through Transactions, and Grandfathered Agreements**

264. In July 2002, the Commission accepted the choices of American Electric Power Service Corporation, ComEd, Commonwealth Edison Company of Indiana, and The Dayton Power and Light Company to join PJM.<sup>538</sup> In so doing, the Commission found that those RTO choices would result in an elongated and highly irregular seam between Midwest ISO and PJM that would “island” portions of Midwest ISO (Wisconsin and Michigan) from the remainder of Midwest ISO and would divide highly interconnected transmission systems across which substantial trade takes place. The Commission found that, without mitigation, the seam would subject a large number of transactions in the region to continued rate pancaking, impeding the goals of Order No. 2000. Therefore, as a condition of accepting those RTO choices, the Commission required parties in the region to address the problem of rate pancaking across the Midwest ISO-PJM seam and instituted a proceeding under section 206 of the FPA<sup>539</sup> to investigate the rates for service between the two RTOs and established trial-type hearing procedures.<sup>540</sup> Following the hearing and issuance of an initial decision,<sup>541</sup> the Commission found that the pancaked rates for service wheeled through or out of one RTO to serve load in the other RTO were unjust and unreasonable and directed the RTOs to eliminate them.<sup>542</sup>

265. As part of the elimination of the pancaked rates between Midwest ISO and PJM, the Commission also directed Midwest ISO and PJM, under section 206 of the FPA, to

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<sup>537</sup> MVP Order, 133 FERC ¶ 61,221 at P 444. We note that, according to AWEA-WOW, Midwest ISO is developing an estimate of the MVP usage rate based on historical energy usage to post in advance on OASIS. AWEA-WOW Request for Rehearing at 23.

<sup>538</sup> *Alliance Co.*, 100 FERC ¶ 61,137 (2002) (Alliance 2002 Order), *order on reh'g*, 103 FERC ¶ 61,274 (2003).

<sup>539</sup> 16 U.S.C. § 824e (2006).

<sup>540</sup> Alliance 2002 Order, 100 FERC ¶ 61,137.

<sup>541</sup> *Midwest Indep. Transmission Sys. Operator, Inc., et al.* 102 FERC ¶ 63,049 (2003).

<sup>542</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 104 FERC ¶ 61,105 (2003) (July 23, 2003 Order).

work with their transmission-owning members to propose, consistent with the RTOs' existing Joint Operating Agreement, a method to allocate between the RTOs the costs of new transmission facilities that are built in one RTO but provide benefits to customers in the other RTO (cross border facilities).<sup>543</sup> The Commission ultimately accepted proposals to include in the Joint Operating Agreement methods to allocate between the RTOs the cost of cross-border facilities built for reliability purposes (reliability cross-border projects)<sup>544</sup> and cross border facilities that provide economic benefits (economic cross-border projects).<sup>545</sup>

#### A. MVP Order

266. In the MVP Order, the Commission accepted the proposed MVP charge for export and wheel-through transactions, except for transactions that sink in PJM. With regard to transactions that sink in PJM, the Commission stated that Filing Parties had not shown that their proposal did not constitute a resumption of rate pancaking along the Midwest ISO-PJM seam, contrary to previous Commission orders.<sup>546</sup> The Commission stated that, while there have been some changes since the elimination of rate pancaking between Midwest ISO and PJM, it did not find that such changes were sufficient to mitigate the RTO scope and configuration concerns that led the Commission to find that pancaked rates between Midwest ISO and PJM are unjust and unreasonable. The Commission also found arguments that its decision to eliminate rate pancaking is now incorrect to be impermissible collateral attacks on prior Commission orders.<sup>547</sup>

267. With regard to the treatment of grandfathered agreements, the MVP Order found that, although grandfathered agreement loads benefit from MVPs, consistent with the treatment of grandfathered agreements under Schedule 26, grandfathered agreements should be exempt from the regional allocation of MVP costs under Schedule 26-A. Further, the MVP Order found that transmission owners already recover the costs of all facilities used to provide service to grandfathered agreement customers, including MVPs

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<sup>543</sup> November 18, 2004 Order, 109 FERC ¶ 61,168 at P 60, *order on reh'g*, 131 FERC ¶ 61,174, at P 22 (2010) (May 21, 2010 Rehearing Order).

<sup>544</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 122 FERC ¶ 61,084 (2008).

<sup>545</sup> *Midwest Indep. Transmission Sys. Operator, Inc.*, 129 FERC ¶ 61,102 (2009).

<sup>546</sup> MVP Order, 133 FERC ¶ 61,221 at P 440 (citing July 23, 2003 Order, 104 FERC ¶ 61,105 at P 35).

<sup>547</sup> MVP Order, 133 FERC ¶ 61,221 at P 440.

and other facilities that are eligible for regional cost sharing, under grandfathered agreements.

**B. Requests for Rehearing**

**1. Rate Pancaking**

268. Midwest ISO argues that applying the MVP charge to PJM would recover the cost of *new* transmission facilities that were *regionally* planned and provide *cross-border* benefits and, therefore, should be distinguished from the pancaked rates addressed by prior Commission orders that concerned *existing* transmission facilities that were *individually* planned and provided only *local* benefits. It states that the Commission's previous orders expressly encourage the broader sharing of costs for new transmission facilities resulting from an RTO's regional planning process that provide cross-border benefits and, therefore, are not contravened by the proposed MVP cost allocation.<sup>548</sup> It claims that the Commission's prior elimination of rate pancaking was driven by the circumstances at that time, including the notion that Midwest ISO and PJM would eventually establish a common market and concerns regarding an irregular seam, which are no longer sufficient to justify exempting PJM from MVP charges. Midwest ISO maintains that the MVP cost allocation, as applied to PJM, is based on cost causation principles and does not constitute rate pancaking, just as the JOA's cost allocation for other types of cross-border projects and the allocation of MVP charges to non-PJM export and wheel-through transactions do not contravene the Commission's rate pancaking orders.

269. Midwest ISO argues that the MVP Proposal is not inconsistent with the Commission's precedent and, therefore, its supportive arguments do not constitute collateral attacks on prior Commission orders. It states that it is not arguing that prior Commission orders eliminating rate pancaking between Midwest ISO and PJM are incorrect or that such orders are being overturned by the MVP Proposal. Instead, Midwest ISO emphasizes that those orders involved a different context and, within their scope, are being appropriately implemented. It claims that such prior orders do not preclude the application of MVP costs to export and wheel-through transactions sinking in PJM in order to recover the cost of MVPs that provide cross-border benefits.<sup>549</sup>

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<sup>548</sup> Midwest ISO Request for Rehearing at 4 (citing July 23, 2003 Order, 104 FERC ¶ 61,105).

<sup>549</sup> Midwest ISO adds that, pending the outcome of the Transmission NOPR and in the absence of an existing agreement establishing an appropriate cross-border methodology, the allocation of MVP costs to PJM is just and reasonable.

270. Midwest ISO Transmission Owners argue that the MVP Proposal should be distinguished from the Commission's precedent regarding the elimination of rate pancaking along the Midwest ISO-PJM border. They state, consistent with Filing Parties' previous Answer, that the Commission's previous orders eliminated through-and-out charges for existing facilities designed primarily to serve local needs, while MVPs are designed to provide regional benefits. They also maintain that circumstances have changed since 2003, including various changes to the membership of the RTOs and the Commission's decision not to require a joint and common market. Midwest ISO Transmission Owners argue that the Commission responded to these arguments with a single sentence, which does not constitute a meaningful response or satisfy its burden to articulate a rational connection between the facts found and the choices made. They add that the Commission's previous concerns regarding an irregular seam have been alleviated by the subsequent decision by Illinois Power to remain in Midwest ISO as well as the recent request by ATSI to withdraw from Midwest ISO and align with PJM. The Commission did not engage in reasoned decision-making on this issue, they claim, because the Commission did not address why the current configuration of the Midwest ISO-PJM border is sufficiently different than Midwest ISO's borders with other neighbors to justify different treatment.

271. MISO Northeast Transmission Customers argue that, while it was appropriate to recognize rate pancaking concerns at the time that Midwest ISO was formed, the allocation of MVP costs to PJM is driven by an entirely different set of motivating factors caused by state renewable portfolio standards.

272. Wisconsin Commission argues that the circumstances justifying the anti-rate pancaking orders in 2003 no longer justify the orders' application to preclude MVP charges for wheel-through and export transactions sinking in PJM. It contends that, since 2003, numerous and substantial changes have occurred that affect the factual and legal landscape, including the Energy Policy Act of 2005, which requires the Commission to facilitate the planning and expansion of transmission facilities and issue regulations establishing incentive-based rates.<sup>550</sup> Wisconsin Commission also claims that the Commission admits that new factual situations affecting the grid were not present when the anti-rate pancaking orders were issued, stating that access to location-constrained renewable energy resources has become a major policy concern,<sup>551</sup> and integrating wind

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<sup>550</sup> Wisconsin Commission Request for Rehearing at 6-7 (citing Energy Policy Act of 2005 §§ 1233(a), 1241).

<sup>551</sup> Wisconsin Commission Request for Rehearing at 7 (citing MVP Order, 133 FERC ¶ 61,221 at P 190).



resources in the western part of Midwest ISO has affected cost allocation acceptability.<sup>552</sup> Wisconsin Commission concludes that this is clear recognition that generation resources require new transmission and cost allocation methods, but the Commission failed to carry this admission to its logical conclusion by finding that the anti-rate pancaking orders do not apply to the proposed MVP cost allocation.

273. Midwest ISO Transmission Owners maintain that the Commission failed to respond meaningfully to arguments Filing Parties raised in their October 18, 2010 Answer. They state, for example, that Filing Parties argued that charging transmission customers for off-system sales is the rule, rather than the exception, under Commission precedent, the Commission routinely approves charges for deliveries to external Balancing Authority Areas, and all of the RTOs charge for export transactions.<sup>553</sup> They argue that the lack of an export charge between Midwest ISO and PJM is an anomaly based on circumstances and the respective scope and configurations of the RTOs at the time the Commission's rate pancaking orders were issued. Midwest ISO Transmission Owners contend that the proposed cost allocation to PJM is squarely within the norm of the industry and is wholly consistent with the Commission's cost causation precedent. In addition, Midwest ISO Transmission Owners argue that Filing Parties noted several similarities between the MVP Proposal and certain rates that Midwest ISO is permitted to charge to transactions sinking in PJM. They state that the Commission's justifications for assessing MVP charges on non-PJM exports (e.g., integrated facilities support all users of the system) are similar to the Commission's justifications for assessing Schedule 10 and 17 charges to all transactions, including transactions sinking in PJM.<sup>554</sup> They conclude that the Commission's one-sentence response was not based on substantial evidence and was arbitrary and capricious.

274. IPL contends that the Commission's argument that imposing a charge on PJM would entail a re-introduction of rate pancaking should be reversed on rehearing. IPL claims that the MVP charge would be imposed on load within Midwest ISO, resulting in rate pancaking *within* an RTO. As a result, IPL argues that the Commission's decision is insupportable because it would permit internal rate pancaking within an RTO but not

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<sup>552</sup> Wisconsin Commission Request for Rehearing at 7 (citing October 23, 2009 Order, 129 FERC ¶ 61,060 at P 58).

<sup>553</sup> Midwest ISO Transmission Owners Request for Rehearing (citing Filing Parties October 18, 2010 Answer at 42).

<sup>554</sup> Midwest ISO Transmission Owners Request for Rehearing at 17 (citing Filing Parties Answer at 45-46, n.138).

between two RTOs.<sup>555</sup> IPL also argues that the Commission's order is inconsistent and counterproductive because it seeks to eliminate the Midwest ISO-PJM seam while erecting another barrier in its place. IPL argues that, if the Commission's justification is that Midwest ISO loads are not similarly situated to PJM loads, the Commission has not explained why the MVP charge should apply to transactions flowing to other, external areas. IPL contends that the Commission has repeatedly recognized that unjust and unreasonable results would follow unless the seams between the regions were eliminated, and it asserts that allowing disparate treatment for load in these intertwined regions has resulted in controversy and costly litigation.<sup>556</sup>

## 2. Cost Causation & Inter-Regional Benefits

275. Michigan Commission asserts that the Commission's decision to insulate exports to PJM from MVP costs did not reflect reasoned decision-making and violates cost causation principles. Michigan Commission argues that the Commission has provided no justification for why its policy prohibiting pancaked rates should automatically trump its policy that costs be allocated to beneficiaries. It claims that the Commission has failed to make any showing that PJM customers do not receive MVP benefits, and Filing Parties have proposed a methodology that is consistent with cost allocation principles. Michigan Commission contends that the Commission should make an exception to its policy prohibiting pancaked rates to ensure that MVP costs are assigned to beneficiaries.<sup>557</sup>

276. OMS<sup>558</sup> claims that export and wheel-through transactions that sink in PJM benefit PJM loads, including through increased transfer capacity needed to satisfy renewable portfolio standards in PJM and to permit wheel-through transactions because "of productivity levels of and experience with terrestrial renewable generation in the Midwest ISO footprint."<sup>559</sup> It states that a significant amount of power purchased by PJM utilities to comply with state public policy requirements will be produced in Midwest ISO and transmitted via MVPs. Given these benefits, OMS claims that PJM

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<sup>555</sup> IPL Request for Rehearing at 21-22.

<sup>556</sup> IPL Request for Rehearing at 22 (citing May 21, 2010 Rehearing Order, 131 FERC ¶ 61,174).

<sup>557</sup> Michigan Commission Request for Rehearing at 15.

<sup>558</sup> Illinois Commission and Kentucky Commission abstain from OMS' request for rehearing of this issue.

<sup>559</sup> OMS Request for Rehearing at 6.

members that derive MVP benefits should be allocated a portion of MVP costs. By preventing an allocation of MVP costs to PJM members, OMS claims that the Commission has endorsed free ridership by PJM members on MVPs, which is discriminatory, contrary to cost causation principles,<sup>560</sup> and not conducive to just and reasonable rates. OMS argues that the Commission should reconsider its decision and direct Midwest ISO to develop and file a rate that differentiates between MVPs that provide only intra-regional benefits and those that provide both intra- and inter-regional benefits.

277. Midwest ISO Transmission Owners argue that, in rejecting the application of MVP charges to exports and wheel-through transactions sinking in PJM, the Commission failed to render a reasoned decision by disregarding substantial, persuasive evidence of broad regional benefits accruing to all users of the Midwest ISO system. They state that nowhere does the Commission find that PJM customers do not benefit from or cause costs associated with MVPs, nor does the Commission indicate why exports sinking in PJM benefit less from MVP development than internal Midwest ISO transactions or wheel-through and export transactions that sink in other external areas.

278. Midwest ISO contends that the application of the MVP charge to PJM is consistent with the same cost causation principles upon which the Commission relied in support of applying the charge to all non-PJM export and wheel-through transactions. It claims that the failure to apply MVP charges for similar transactions sinking within PJM would result in the lack of comparable treatment for otherwise similar transactions. It argues that, in effect, the Commission prevented external loads from becoming free riders but arbitrarily and capriciously allowed such free ridership for transactions sinking in PJM. Midwest ISO argues that the Commission abused its discretion by allowing one subset of MVP beneficiaries to avoid bearing their fair share of MVP costs.

279. Hoosier-SIPC argues that the Commission's decision to exempt PJM members from MVP charges creates free riders and violates cost causation principles. They claim that the Commission's decision is arbitrary and capricious because it provided no explanation for why this exemption does not provide an undue advantage or subsidy to PJM loads or an incentive for load-serving entities to withdraw from Midwest ISO. To demonstrate their concerns, Hoosier-SIPC points to the Green Power Express project, asserting that, if the Commission had exempted loads in Chicago and elsewhere in PJM from an allocation of the costs of the Green Power Express project, it would have provided those loads with a subsidy at the expense of Midwest ISO loads.

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<sup>560</sup> OMS Request for Rehearing at 7 (citing *Illinois Commerce Commission*, 576 F.3d at 476-77).

280. Wisconsin Commission argues that excluding export and wheel-through transactions that sink in PJM from MVP charges is arbitrary and capricious, unsupported by substantial evidence, and contrary to cost causation principles.<sup>561</sup> Wisconsin Commission contends that the Commission's decision to prohibit export charges to PJM is inconsistent with its explicit recognition that loads external to Midwest ISO would enjoy an "undue advantage" if they were relieved of the MVP charge.<sup>562</sup> It asserts that this rationale applies equally, if not more, to PJM because of the intertwined geographical territories of PJM and Midwest ISO. It states that the Commission justifies its decision using the Regional Generation Outlet Study but inexplicably rejects the study's conclusion that MVPs will produce material benefits to PJM.<sup>563</sup> As an example of the MVP benefits flowing to PJM, Wisconsin Commission points to the Green Power Express project, stating that the project would clearly qualify as an MVP and that it would be contrary to *Illinois Commerce Commission* to impose on Midwest ISO consumers the project's costs while significant benefits accrue to PJM ratepayers.

281. MISO Northeast Transmission Customers contend that the failure to allocate MVP costs to PJM will create a free rider situation, where the costs related to the operation of wind generation and the delivery of wind energy to PJM states with renewable portfolio standards will be borne entirely by Midwest ISO ratepayers.

282. IPL argues that the Commission's rejection of the allocation of MVP costs to PJM loads violates FPA section 205 by creating unreasonable rate differences between the Midwest ISO and PJM regions and an undue preference in favor of PJM ratepayers.<sup>564</sup> IPL asserts that this would result in undue discrimination by requiring transmission projects for renewable resources to be funded by Midwest ISO ratepayers in states that have not enacted a renewable portfolio standard (e.g., customers in Indiana) but not by PJM ratepayers that would use the renewable energy to satisfy their renewable portfolio standards (e.g., customers in North Carolina). It claims that, under the proposal, Illinois

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<sup>561</sup> Wisconsin Commission Request for Rehearing at 2 (citing *Illinois Commerce Commission*, 576 F.3d 470, and *KN Energy*, 968 F.2d 1295).

<sup>562</sup> Wisconsin Commission Request for Rehearing at 4 (citing MVP Order, 133 FERC ¶ 61,221 at P 443).

<sup>563</sup> Wisconsin Commission Request for Rehearing at 5 (citing Midwest ISO, *RGOS Regional Generation Outlet Study* at 1, 4-8, 51-52 (Nov. 19, 2010) available at <https://www.midwestiso.org/Library/Repository/Study/RGOS/Regional%20Generation%20Outlet%20Study.pdf>)

<sup>564</sup> IPL Request for Rehearing at 19-20 (citing 16 U.S.C. § 824d(b) (2006)).

customers in Midwest ISO will subsidize facilities used by Illinois customers in PJM, which is discriminatory and inconsistent with cost causation principles. IPL argues that the Commission cannot justify socializing MVP costs broadly based on “vague generalized benefits statements” and then exempt certain portions of the geographic footprint from having to pay for facilities that will provide those benefits.<sup>565</sup> In particular, IPL argues that the Commission listed the general benefits of the MVP Proposal that accrue “regardless of whether the ultimate point of delivery is to an internal or external load,” but then exempts external loads that lie within PJM.<sup>566</sup> IPL maintains that, by rejecting the allocation of MVP costs to PJM loads, the Commission created a free-rider problem of “monumental proportions.”<sup>567</sup> IPL concludes that the “end result” of the MVP rate is what matters here, and it is manifestly unjust and unreasonable to permit a party on the East Coast to purchase power from a wind farm in the Dakotas and pay nothing for the transmission facilities without which that power could not be delivered.<sup>568</sup>

283. IPL argues that the Commission erred by relying on the socialization of Midwest ISO administrative costs to justify the proposed cost allocation.<sup>569</sup> IPL argues that this parallel is inapposite because the Commission failed to explain why sharing administrative costs justifies socializing transmission expansion costs without satisfying cost causation principles.<sup>570</sup> IPL argues that the Commission rejected this parallel later in the MVP Order, stating that “Filing Parties have not demonstrated that Midwest ISO administrative charges under Schedules 10 and 17 are comparable to the proposed MVP

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<sup>565</sup> IPL Request for Rehearing at 21 (citing MVP Order, 133 FERC ¶ 61,221 at P 190).

<sup>566</sup> IPL Request for Rehearing at 21 (citing MVP Order, 133 FERC ¶ 61,221 at P 439, 440).

<sup>567</sup> IPL Request for Rehearing at 22-23 (citing, *e.g.*, MVP Order, 133 FERC ¶ 61,221 at P 439).

<sup>568</sup> IPL Request for Rehearing at 23 (citing *Illinois Commerce Commission*, 576 F.3d at 475).

<sup>569</sup> IPL Request for Rehearing at 24-25 (citing MVP Order, 133 FERC ¶ 61,221 at P 196).

<sup>570</sup> IPL adds that there is little upon which to allocate Midwest ISO administrative charges except on a load-ratio share basis. IPL Request for Rehearing at 24-25.

charges.”<sup>571</sup> IPL argues that, when a Commission order is internally inconsistent such that its reasoning cannot be deciphered, the Commission cannot be said to have engaged in reasoned decision-making.<sup>572</sup>

### 3. Grandfathered Agreements

284. Indicated Midwest ISO Transmission Owners argue that the MVP Order’s finding is “simply wrong: the sponsor of a transmission project obviously cannot recover the costs of its project from customers under a [grandfathered agreement] *to which it is not a party*, and regional cost-sharing, by definition, implies allocation of costs to loads served by *other* transmission owners that would be the party to [grandfathered] agreements with customers in their zones.”<sup>573</sup>

285. Indicated Midwest ISO Transmission Owners further note that while costs may be allocated to grandfathered agreement loads under Schedule 23, recovery of MVP costs from grandfathered agreement loads is not permitted under Schedule 26. The end result, they say, is that whenever the costs of an Attachment GG project are allocated to one or more zones that have grandfathered agreement load in their Attachment GG divisor, the Midwest ISO Tariff will recover less than 100 percent of the project’s revenue requirement.<sup>574</sup>

286. Indicated Midwest ISO Transmission Owners state that Filing Parties explained that they merely “carried forward” the grandfathered agreement exemption from Schedule 26 in proposing new Schedule 26-A, and acknowledged that some Filing Parties support elimination of that exemption but suggested that this issue would best be addressed in a separate FPA section 205 filing that could consider both Schedules 26 and 26-A. Indicated Midwest ISO Transmission Owners argue that the Commission should clarify that its statements in the MVP Order do not preclude or prejudice any future section 205 filing proposing a means to recover from grandfathered agreement

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<sup>571</sup> IPL Request for Rehearing at 25 (citing MVP Order, 133 FERC ¶ 61,221 at P 442).

<sup>572</sup> IPL Request for Rehearing at 25. IPL notes that the proposed usage charge allocates costs such that only PJM entities that actually schedule imports would be assessed costs for the facilities that they utilize (i.e., PJM load that does not import power would not be charged). *Id.*

<sup>573</sup> Indicated Midwest ISO Transmission Owners Request for Rehearing at 7.

<sup>574</sup> Indicated Midwest ISO Transmission Owners Request for Rehearing at 8.

customers the costs of service from which they are shown to benefit.<sup>575</sup> If the Commission does not grant clarification, Indicated Midwest ISO Transmission Owners request rehearing on this issue.<sup>576</sup>

287. IMEA faults the Commission's decision as turning "a blind eye to the Commission's consistent refrain of the cost causation principle."<sup>577</sup> IMEA states that the Commission has made clear that a project meeting the MVP Criteria will be deemed to benefit the entire Midwest ISO footprint, if for no other reason than it will contribute, as part of the network transmission system, to system reliability. On these grounds, argues IMEA, there is no reason for exempting a class of these users from paying their fair share of costs. IMEA also asserts that the MVP Order ignores the Commission's decisions finding that administrative charges and charges associated with operating energy markets can fairly be allocated to transactions under grandfathered transmission service agreements. IMEA states that the very precedent relied upon by the Commission supports allocating MVP costs to grandfathered agreements.<sup>578</sup>

### **C. Commission Determination**

288. We continue to find that the proposed methodology to allocate MVP costs to export and wheel-through transactions that sink in PJM is contrary to the Commission's previous orders eliminating rate pancaking, and accordingly, we will deny rehearing. As explained in the MVP Order, the Commission found in its previous orders eliminating rate pancaking between Midwest ISO and PJM that, due to the RTO scope and configuration that resulted from the RTO choices of certain transmission owners now within Midwest ISO and PJM, the continuation of rate pancaking between PJM and

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<sup>575</sup> Indicated Midwest ISO Transmission Owners Request for Rehearing at 12.

<sup>576</sup> Indicated Midwest ISO Transmission Owners Request for Rehearing at 13.

<sup>577</sup> IMEA Request for Rehearing at 14.

<sup>578</sup> IMEA Request for Rehearing at 15 & n.7 (citing MVP Order, 133 FERC ¶ 61,221 at P 196; Opinion No. 453, 97 FERC ¶ 61,033 (applying charges for scheduling, system control and dispatch under Schedule 1 of the Tariff, and for Midwest ISO administrative costs under Schedule 10 of the Tariff), *reh'g denied*, 98 FERC ¶ 61,141 (2002), *aff'd sub nom. Midwest ISO Transmission Owners*, 373 F.3d 1361; *Midwest Indep. Transmission Sys. Operator, Inc.*, 108 FERC ¶ 61,236 (2004) (applying charges for administrative costs associated with energy markets under Schedule 17 of the Tariff), *order on reh'g*, 111 FERC ¶ 61,042 (2005), *aff'd sub nom. Wisconsin Public Power, Inc. v. FERC*, 493 F.3d 239 (D.C. Cir. 2007)).

Midwest ISO violated Order No. 2000's requirement that RTOs eliminate rate pancaking within a region of appropriate scope and configuration. Accordingly, the Commission found that such pancaked rates constituted unjust and unreasonable rates and required the RTOs to eliminate them.<sup>579</sup> As discussed below, neither the arguments regarding the changes that have occurred in the Midwest ISO and PJM markets since those orders were issued nor those supporting the need to allocate MVP costs to PJM loads persuade us that an MVP rate design reinstating pancaked rates between Midwest ISO and PJM would be just and reasonable.

289. We are unconvinced that the scope and configuration of Midwest ISO and PJM have changed sufficiently to find that rate pancaking between Midwest ISO and PJM may resume. As the Commission previously explained, Order No. 2000 indicates that, among the factors that will be considered when determining appropriate RTO configuration, the Commission will consider the extent to which an RTO would encompass one contiguous area, encompass a highly interconnected portion of the grid, and recognize trading patterns.<sup>580</sup> Accordingly, the Commission previously considered evidence regarding those factors and found that rate pancaking between Midwest ISO and PJM would be unjust and unreasonable.<sup>581</sup> In contrast, while Midwest ISO Transmission Owners and Midwest ISO assert that the membership of PJM and Midwest ISO has changed such that the Commission's previous concerns have been alleviated, no party has provided substantial evidence comprehensively addressing the factors identified in Order No. 2000, nor have they otherwise supported their claim that the Commission's scope and configuration findings regarding the irregular Midwest ISO-PJM seam no longer are justified.<sup>582</sup> While parties may be correct that the underlying regulatory priorities and state and federal requirements have changed since the Commission rendered its previous findings regarding the appropriateness of rate pancaking between Midwest ISO and PJM (e.g., implementation of state renewable portfolio standards), the relevant requirements of Order No. 2000 remain applicable. Absent a finding that the scope and configuration of Midwest ISO and PJM have changed such that rate pancaking may resume between them, we cannot accept the proposed MVP cost allocation methodology for transactions that sink in PJM. While Midwest ISO Transmission Owners correctly note that the Commission has approved export charges in other contexts – and, indeed, for transactions

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<sup>579</sup> MVP Order, 133 FERC ¶ 61,221 at P 440 (citing, *e.g.*, July 23, 2003 Order, 104 FERC ¶ 61,105 at P 35).

<sup>580</sup> July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29.

<sup>581</sup> July 23, 2003 Order, 104 FERC ¶ 61,105 at P 33-34.

<sup>582</sup> July 23, 2003 Order, 104 FERC ¶ 61,105 at P 33.



that sink outside of Midwest ISO and PJM in this proceeding – the Commission’s decision not to permit pancaked rates between Midwest ISO and PJM applies to the MVP cost allocation proposed here.

290. Several parties argue that certain characteristics and unique attributes of the MVP Proposal justify Commission acceptance of an allocation methodology that would allow pancaked MVP charges between Midwest ISO and PJM. Among other things, they attempt to distinguish MVP charges from the pancaked rates that were previously eliminated by the Commission on the basis of the types of transmission projects considered (e.g., new versus existing transmission projects), transmission planning processes employed (e.g., regional versus local project planning), or benefits generated (e.g., cross-border versus local benefits). However, none of these arguments change our view of the scope and configuration of Midwest ISO and PJM, nor do they suggest that the design of the proposed MVP cost allocation methodology would not involve pancaked rates between Midwest ISO and PJM. Contrary to Midwest ISO’s argument that the proposed allocation of MVP costs to PJM is permissible because the Commission’s previous orders encouraged a broader sharing of transmission costs, any such statements did not implicitly endorse an impermissible resumption of rate pancaking. In addition, while Midwest ISO Transmission Owners correctly note that the Commission allows Midwest ISO to charge PJM entities under Schedules 10 and 17 of the Midwest ISO Tariff, we are not persuaded that MVP charges should be viewed as being akin to charges that recover the costs associated only with administering Midwest ISO and its markets.<sup>583</sup>

291. Midwest ISO Transmission Owners and IPL challenge the Commission’s decision to exempt PJM entities from an allocation of MVP charges but not loads within Midwest ISO or in other regions outside Midwest ISO. We find that these arguments are collateral attacks on the Commission’s previous decision to eliminate rate pancaking between Midwest ISO and PJM, but not between Midwest ISO and other RTOs, and as such, we need not consider them. Nonetheless, we note that, in its order eliminating rate pancaking between Midwest ISO and PJM, the Commission recognized that it had not

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<sup>583</sup> In response to IPL’s argument regarding the MVP Order’s discussion of administrative charges, the Commission likened the sharing of administrative costs to the sharing of transmission expansion costs only to support its general argument that it is appropriate for all users of the grid to share in the cost of programs and activities that benefit the grid as a whole. The Commission did not argue that the charges have similar rate designs nor that they can be viewed as being akin with specific regard to the application of the Commission’s decision to eliminate rate pancaking between PJM and Midwest ISO.

required the elimination of inter-RTO rate pancaking elsewhere, but stated that the circumstances presented in that proceeding were “unprecedented” and explained that certain transmission owners were “uniquely situated” in relation to PJM and Midwest ISO.<sup>584</sup>

292. We also disagree with claims that the MVP Order conflicts with cost causation principles, endorses free ridership by PJM members, or condones unduly preferential treatment for PJM loads. As noted in the MVP Order, when the Commission eliminated pancaked rates between Midwest ISO and PJM and directed them, along with their transmission owners, to develop a proposal to allocate costs associated with transmission facilities that create cross-border benefits, the Commission “did not allow them to re-impose the pancaked rates that the Commission had found unjust and unreasonable.”<sup>585</sup> Consistent with this finding, in the MVP Order, while the Commission rejected the proposed methodology to allocate MVP costs to transactions that sink in PJM, the Commission did not find that any allocation of MVP costs to PJM would necessarily be unjust and unreasonable, nor did the Commission otherwise prohibit Midwest ISO from seeking to allocate MVP costs to PJM loads (e.g., through a filing under section 205 of the FPA) in a manner that does not involve an impermissible resumption of pancaked rates and is in accordance with cost causation principles.

293. With regard to the treatment of grandfathered agreements, we deny IMEA’s request for rehearing. In the MVP Order the Commission found that Midwest ISO’s proposal to exclude grandfathered agreements from the regional allocation of MVP costs under Schedule 26-A was consistent with the existing exclusion of grandfathered agreements from the regional allocation of the costs of other transmission expansion projects under Schedule 26. While Commission precedent supports the allocation of some costs to grandfathered agreements,<sup>586</sup> those costs are a separate issue from the regional cost sharing for transmission projects dealt with under Schedules 26 and 26-A. For example, in accepting Schedule 23 the Commission allowed grandfathered agreements to be charged under Schedules 10 and 17 because it found that the services associated with those schedules represented a monumental transformation with respect to

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<sup>584</sup> July 23, 2003 Order, 104 FERC ¶ 61,105 at P 29-30.

<sup>585</sup> MVP Order, 133 FERC ¶ 61,221 at P 442 (citing November 18, 2004 Order, 109 FERC ¶ 61,168 at P 60).

<sup>586</sup> See *Transmission Owners of Midwest Indep. Transmission Sys. Operator, Inc.*, 110 FERC ¶ 61,339 (2005) (March 24, 2005 Order), *order on reh’g*, 113 FERC ¶ 61,122 (2005), *aff’d sub nom. E. Ky. Power Coop., Inc. v. FERC*, 489 F.3d 1299 (D.C. Cir. 2007).

the way that electricity is sold and distributed in the Midwest ISO region.<sup>587</sup> As the D.C. Circuit Court explained in *Midwest ISO Transmission Owners*, grandfathered agreements are not exempt from having to pay these costs because they are the costs of having an ISO. Although grandfathered agreements are generally exempt from the costs of using the ISO, they do benefit from having it.<sup>588</sup> In accepting the MVP Proposal, the Commission found that MVPs would bring broad regional benefits to the users of the Midwest ISO system. However, the Commission did not find that they would provide transformative new services to customers under grandfathered agreements, sufficient to depart from the exemption from regional cost-sharing under Schedule 26, because evidence to that effect was not presented by Filing Parties.

294. Finally, we will grant Indicated Midwest ISO Transmission Owners' request for clarification. Beyond finding that the exemption of grandfathered agreements under Schedule 26-A is consistent with their treatment under Schedule 26, we will make no further arguments or claims that may preclude or prejudice any future section 205 filing proposing changes to the responsibility of grandfathered agreements for regional cost-sharing.

## **VII. Revisions to Auction Revenue Right and Financial Transmission Right Rules**

### **A. MVP Order**

295. In the MVP Order, the Commission agreed with parties that Midwest ISO's existing Financial Transmission Right and Auction Revenue Right assignment processes must be modified to be consistent with the allocation of cost responsibility inherent in the MVP methodology. The MVP Order directed Midwest ISO to make a compliance filing to address "what changes to its allocation of congestion rights are necessary to reflect the allocation of MVP costs."<sup>589</sup>

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<sup>587</sup> March 24, 2005 Order, 110 FERC ¶ 61,339 at P 38.

<sup>588</sup> *Midwest ISO Transmission Owners*, 373 F.3d at 1376.

<sup>589</sup> MVP Order, 133 FERC ¶ 61,221 at P 395. The MVP Order directed Midwest ISO to make this compliance filing no later than June 1, 2011. Midwest ISO subsequently filed a motion for an extension of time to submit the compliance filing on March 1, 2012, since the 2013-2014 Financial Transmission Right and Auction Revenue Right allocation year will be the first allocation year impacted by MVPs. Midwest ISO, Motion for Extension of Time to Submit a Compliance Filing, Docket No. ER10-1791-000 (May 12, 2011). Midwest ISO's request was granted on May 23, 2011. Notice of Extension of Time, Docket No. ER10-1791-000 (May 23, 2011).

## **B. Requests for Rehearing**

296. AMP states that the Commission offered no guidance or standards to govern Midwest ISO's compliance filing so as to properly reflect the adoption of the MVP cost allocation method in the assignment of Financial Transmission Rights and Auction Revenue Rights. AMP claims that the Commission thus failed to engage in reasoned decision-making based on substantial evidence and its decision regarding congestion rights was arbitrary, capricious, an abuse of discretion and otherwise unlawful. AMP states that parties that believe that the Midwest ISO-filed changes do not properly or adequately reflect adoption of the MVP method will have no meaningful opportunity to challenge Midwest ISO's proposal. AMP asserts that, in challenging a compliance filing, parties are strictly limited to asserting that the filing does not conform to the Commission's explicit directives in the underlying order.<sup>590</sup>

297. Midwest TDUs state that the MVP Order ignored their concerns about Midwest ISO testimony suggesting a planned decoupling of Midwest ISO's allocation of long-term rights from the specific long-term power supply arrangements made and planned by load-serving entities to meet their load-serving obligations, contrary to the directives of section 217(b)(4) and the Commission's rules and orders implementing that statute. Midwest TDUs state that the Commission should provide guidance to make clear that the compliance filing must be crafted to comply with that congressional mandate and Order No. 681 and its progeny.<sup>591</sup>

## **C. Commission Determination**

298. We deny the requests that the Commission provide guidance regarding modifications to Midwest ISO's Financial Transmission Right and Auction Revenue Right cost allocation processes. Midwest ISO explained that since the MVP cost allocation methodology encompasses a broader funding base for transmission projects with regional benefits, it believes that the Financial Transmission Right and Auction Revenue Right allocation processes need to be modified so that the benefits of MVP transmission as determined through those processes are consistent. Midwest ISO stated that it was studying potential issues internally and solutions that could be presented to

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<sup>590</sup> AMP Request for Rehearing at 14-17 (citing, e.g., *PJM Interconnection, LLC*, 133 FERC ¶ 61,277, at P 34 (2010) (stating that “[p]rotests to compliance filings are limited to whether the filing meets the Commission’s compliance directive”); and *MoGas Pipeline LLC*, 130 FERC ¶ 61,128, at P 11 (2010) (stating that “the sole purpose of a compliance filing is to implement the specific directives of a Commission order”)).

<sup>591</sup> Midwest TDUs Request for Rehearing at 21-23.

stakeholders for consideration and discussion.<sup>592</sup> According to Midwest ISO, it will address any MVP-related Financial Transmission Right and Auction Revenue Right allocation issues in consultations with stakeholders, and that Tariff revisions will be filed either in the first or second quarter of 2011.<sup>593</sup>

299. In the MVP Order, the Commission agreed with Midwest ISO that the existing Financial Transmission Right and Auction Revenue Right allocation processes may need to be modified, but the Commission also noted that Midwest ISO had some time before the first MVP would go into service. Consistent with Midwest ISO's projected schedule, the Commission required Midwest ISO to address, in a compliance filing due no later than June 1, 2011, what changes to its allocation of congestion rights are necessary to reflect the allocation of transmission costs pursuant to the MVP Proposal. We will not pre-empt or get ahead of Midwest ISO's internal analysis and consultation with stakeholders by providing additional guidance at this time, particularly where those processes have already commenced. As with any issue studied by Midwest ISO and considered by stakeholders, we expect that any proposed changes will meet statutory and regulatory requirements. Further, we do not agree that the compliance filing will eliminate the ability of parties to challenge any modifications proposed by Midwest ISO to the Financial Transmission Right and Auction Revenue Right allocation processes. In addition to active participation in the Midwest ISO stakeholder process, parties will also have the opportunity to challenge the Tariff provisions revising the Financial Transmission Right and Auction Revenue Right allocation processes when Midwest ISO files those changes.

## **VIII. Allocation of MVP Costs to Withdrawing and New Midwest ISO Members**

### **A. MVP Order**

300. The MVP Order made three findings regarding withdrawing Midwest ISO members. First, the Commission found that Filing Parties' proposal to charge a withdrawing transmission owner for the financial obligations it incurred as a transmission-owning member of Midwest ISO was just and reasonable. The Commission accepted the corresponding revisions to Attachment FF of the Tariff as consistent with the language of the Transmission Owners Agreement.<sup>594</sup> Second, the Commission accepted Filing Parties' statement that withdrawing transmission owners would receive

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<sup>592</sup> Midwest ISO October 18, 2009 Answer at 77.

<sup>593</sup> Midwest ISO October 18, 2009 Answer at 77.

<sup>594</sup> MVP Order, 133 FERC ¶ 61,221 at P 470.

credits against any MVP usage charges incurred after they withdraw, to the extent necessary to avoid the possibility of withdrawing transmission owners being subject to double billing. To the extent that a withdrawing transmission owner is subject to an exit fee reflecting MVP costs allocated to its zonal load, the exit fee would not constitute rate pancaking.<sup>595</sup> Third, the Commission found that the process of withdrawal, and the particular costs that a withdrawing member may face, were beyond the scope of this proceeding.<sup>596</sup>

301. The MVP Order accepted Midwest ISO's proposed MVP cost allocation to new transmission-owning members of Midwest ISO. For MVPs approved prior to a new transmission-owning member's entry date, the load interconnecting to the transmission owner's transmission system would be responsible for 25 percent of the MVP usage charge in the first full year of the transmission owner's membership, 50 percent in the second full year, 75 percent in the third full year, and 100 percent thereafter.

### **B. Requests for Rehearing**

302. AMP, Duke, and FirstEnergy seek clarification and/or rehearing regarding the obligation of withdrawing transmission owners to pay MVP-related charges upon their withdrawal from Midwest ISO. AMP states that the Commission erred by accepting that a withdrawing transmission owner would be responsible for MVP costs, and that the Commission's interpretation of the MVP Proposal is made possible by the acceptance of changes to Attachment FF.<sup>597</sup> AMP states that while it is consistent with the cost causation principle that a transmission owner that joins Midwest ISO after the in-service date of an MVP will bear a share of costs through the MVP usage charge, a withdrawing transmission owner presents a different case. A withdrawing transmission owner would not receive many of the benefits touted by Midwest ISO as justifying an allocation of costs, according to AMP.<sup>598</sup>

303. Duke makes several arguments against Midwest ISO charging withdrawing transmission owners an MVP-related fee upon withdrawal from Midwest ISO. The first of these arguments is that the terms of withdrawal from Midwest ISO are governed by the

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<sup>595</sup> MVP Order, 133 FERC ¶ 61,221 at P 471.

<sup>596</sup> MVP Order, 133 FERC ¶ 61,221 at P 472.

<sup>597</sup> AMP Request for Rehearing at 17-18 (citing MVP Order, 133 FERC ¶ 61,221 at P 471).

<sup>598</sup> AMP Request for Rehearing at 19.

Transmission Owners Agreement and any change to that must be approved unanimously by the Midwest ISO transmission owners,<sup>599</sup> and Midwest ISO cannot make such changes.<sup>600</sup> Second, citing the Midwest ISO Transmission Owners Agreement, Duke states that all financial responsibilities that a withdrawing transmission owner must honor must be incurred prior to withdrawal.<sup>601</sup> Further, Duke cites the withdrawal of Louisville Gas & Electric Company and Kentucky Utilities Company from Midwest ISO, and states that the exit fee was based solely on costs already incurred by the time of withdrawal.<sup>602</sup> Third, Duke points to Filing Parties' proposal and the Tariff changes approved in the MVP Order. In particular, Duke notes that the Midwest ISO Tariff does not include any alternative rate or charge or cost allocation applicable to withdrawing transmission owners for the recovery of MVP-related costs while the transmission owner is still a member. Rather, the Tariff contains the same obligation to honor any financial obligations incurred prior to withdrawal.<sup>603</sup> Duke argues that while the Commission did not directly accept that a withdrawing transmission owner will be subject to a fee that is distinct from its actual usage-based MVP charge, the language of the MVP Order implies such.<sup>604</sup>

304. Duke points out that even if it were appropriate to impose a different cost allocation mechanism on a withdrawing transmission owner, the Midwest ISO Tariff does not actually do so, quoting the approved Midwest ISO Tariff language: “[o]ne hundred percent (100%) of the annual revenue requirements of the Multi Value Projects shall be allocated on a system-wide basis to [t]ransmission [c]ustomers that withdraw energy, including [e]xternal [t]ransactions sinking outside the [Midwest ISO] region, and

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<sup>599</sup> Duke Request for Rehearing at 13 (citing Transmission Owners Agreement, Article Two § IX.C.8).

<sup>600</sup> Duke Request for Rehearing at 13 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 101 FERC ¶ 61,221, at P 52 (2002) (November 22, 2002 Order)).

<sup>601</sup> Duke Request for Rehearing at 26 (citing Transmission Owners Agreement, Article Five § II.B).

<sup>602</sup> Duke Request for Rehearing at 14-15 (citing LG&E Withdrawal Order, 114 FERC ¶ 61,282 at P 54, n.38).

<sup>603</sup> Duke Request for Rehearing at 17 (citing Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. FF § III.A.2.j).

<sup>604</sup> Duke Request for Rehearing at 20-21 (citing MVP Order, 133 FERC ¶ 61,221 at P 471).

recovered through an MVP [u]sage [c]harge pursuant to Attachment MM.”<sup>605</sup> Thus, Duke argues, any upfront charge to withdrawing transmission owners has no basis in the Tariff, because the Tariff lacks any mechanism for allocating costs on a non-usage basis to a withdrawing transmission owner. Further, Duke argues that the Commission cannot read into the Tariff any such obligation by withdrawing transmission owners. According to Duke, this would be a violation of section 205 and Rule 35.1 of the Commission’s regulations.<sup>606</sup> In addition, Duke states, because the Tariff unambiguously addresses the matter at hand, the language of the Tariff is controlling, no matter what Midwest ISO witness Curran might say in her testimony.<sup>607</sup>

305. In its request for rehearing, Duke states that imposing a non-usage based MVP charge on a withdrawing transmission owner is unjust and unreasonable. Duke cites the MVP Order, wherein the Commission found that a usage-based charge is just and reasonable.<sup>608</sup> Duke argues that if the MVP usage rate is a just and reasonable method for recovering the costs of MVPs, it cannot also then be just and reasonable to charge withdrawing transmission owners a demand-based charge upon their withdrawal from Midwest ISO. Duke states that it will receive no benefit from MVPs before it withdraws because they will not yet have been built. Further, it will receive substantially less benefit from these transmission projects after it withdraws and joins PJM, because it will no longer be taking service on Midwest ISO’s system.<sup>609</sup> Further, Duke notes that the Commission has found that no export charge can be levied on energy sinking in PJM.<sup>610</sup>

306. Duke reiterates that any financial obligations for which it is liable must have been incurred prior to its withdrawal from Midwest ISO, citing Commission precedent wherein, Duke argues, Commission language specifically points to the withdrawing transmission owner incurring these obligations *prior to* withdrawal and explicitly rejects

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<sup>605</sup> Duke Request for Rehearing at 48 (citing Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Att. FF § III.A.2.g.j).

<sup>606</sup> See Duke Request for Rehearing at 51-54.

<sup>607</sup> Duke Request for Rehearing at 54-55.

<sup>608</sup> Duke Request for Rehearing at 22 (citing MVP Order, 133 FERC ¶ 61,221 at P 383).

<sup>609</sup> Duke Request for Rehearing at 23.

<sup>610</sup> Duke Request for Rehearing at 23-24 (citing MVP Order, 133 FERC ¶ 61,221 at P 440).



that financial obligations incurred prior to withdrawal includes “ongoing operating costs of the Midwest ISO.”<sup>611</sup> Thus, Duke argues, any financial obligation must occur prior to withdrawal, and not as an act of withdrawal, as would occur in this case, if a withdrawing transmission owner were assigned MVP-related charges upon its withdrawal.<sup>612</sup> Duke also states that any new obligation imposed as a result of withdrawal would be an impermissible alteration of the Transmission Owners Agreement.<sup>613</sup>

307. Further, Duke argues that Midwest ISO Board of Directors approval of an MVP does not create a financial obligation according to the Transmission Owners Agreement.<sup>614</sup> To the degree that the MVP Order approved an allocation of MVP costs to withdrawing transmission owners on the basis of Board of Directors approval rather than actual usage, Duke states that the Commission erred in failing to distinguish the controlling precedent Duke cited in previous filings, to wit, the Commission’s findings in the matter of Duquesne Light Company’s (Duquesne) withdrawal from PJM.<sup>615</sup>

308. Duke argues that there is no protected reliance interest, because any transmission owner constructing transmission has only the expectation of recovering costs from customers who actually take service on the transmission system after the facilities are built. According to Duke, this can be seen in the fact that the rate is usage-based and the allocation will thus change over time as usage changes.<sup>616</sup> Thus, Duke argues, if Midwest ISO claims that it was relying on Duke’s future usage of the transmission system when approving the MVPs, it is reasonable to expect Midwest ISO to take into

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<sup>611</sup> Duke Request for Rehearing at 26 (citing RECB II Order, 118 FERC ¶ 61,209 at P 193; RECB II Rehearing Order, 120 FERC ¶ 61,080 at P 83-84; and LG&E Withdrawal Order, 114 FERC ¶ 61,282 at P 59).

<sup>612</sup> Duke Request for Rehearing at 27.

<sup>613</sup> Duke Request for Rehearing at 28.

<sup>614</sup> Duke Request for Rehearing at 29-30; *see also id.* at 40-42 where Duke illustrates the difference between the MVP cost allocation and the RECB I and RECB II cost allocations.

<sup>615</sup> Duke Request for Rehearing at 47 (citing *Midwest Indep. Transmission System Operator, Inc. and Duquesne Light Co.*, 124 FERC ¶ 61,219 at P 162-170 (2008) (September 3, 2008 Order)).

<sup>616</sup> Duke Request for Rehearing at 30.

account the known withdrawal of Duke when making such a decision.<sup>617</sup> Duke asserts that the Duke utilities are approved for withdrawal from Midwest ISO within weeks of the approval of many of the MVPs and within months of the rest. Further, it will be more than a year after the Duke utilities withdraw from Midwest ISO before the first MVP is placed in service and any test year, per Attachment MM, will occur after the Duke utilities have departed. This move is a known and measurable change resulting in the Duke zone taking no network service from Midwest ISO and receiving significantly less benefit from the construction of MVP facilities.<sup>618</sup> Even if there were a reliance interest, Duke argues, it would be contrary to the equitable considerations that form the basis for such interests to believe that any such reliance were immutable; no transmission planning process is based on expectations that are fixed into the future, obliging a customer to help pay when the facility is actually built, Duke states. This can be seen in the Commission's *pro forma* interconnection procedures.<sup>619</sup>

309. Further, Duke states that upon its withdrawal from Midwest ISO and joining with PJM, to charge it a demand-based MVP-related fee would be unduly discriminatory, in that this charge would be directed only at transmission owners that withdraw from Midwest ISO and join PJM.<sup>620</sup> Duke adds that charging this fee only to Duke (and other transmission owners that are former members of Midwest ISO) and no other PJM members would be unduly discriminatory.<sup>621</sup> According to Duke, it is the obligation of Filing Parties to show that such rate treatment is not unduly discriminatory and of the Commission to make a reasonable finding based on substantial evidence in the record, something Duke argues has not been done.<sup>622</sup> Duke also argues that there is a bigger issue of the rights of a transmission owner to withdraw from Midwest ISO if Midwest ISO is able to raise artificial barriers that block the transmission owner from voluntarily leaving.<sup>623</sup>

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<sup>617</sup> Duke Request for Rehearing at 31.

<sup>618</sup> Duke Request for Rehearing at 56.

<sup>619</sup> Duke Request for Rehearing at 31-33 (citing Order No. 2003-A, FERC Stats. & Regs. ¶ 31,160 at P 320).

<sup>620</sup> Duke Request for Rehearing at 34.

<sup>621</sup> Duke Request for Rehearing at 42.

<sup>622</sup> Duke Request for Rehearing at 36.

<sup>623</sup> See Duke Request for Rehearing at 38-39.

310. Duke argues that it would also be unduly discriminatory to assess Duke, as a transmission owner in PJM, a rate different from that charged to other PJM transmission owners. Because the Commission found that assessing MVP charges on exports and wheel-through transactions that sink in PJM would amount to rate-pancaking and would conflict with existing Commission precedent, to allocate MVP charges to Duke would be to treat it differently from other similarly-situated transmission owners, implicitly allowing rate pancaking for Duke.<sup>624</sup> Duke also notes the difference between this potential charge and the Seams Elimination Charge/Cost Adjustment/Assignment (SECA). Duke states that in the case of the SECA, a new charge was established in order to make up for a lost source of cost recovery due to the ban on rate pancaking between PJM and Midwest ISO. Duke states that the SECA was only necessary due to this lost revenue source. Such is not the case here, according to Duke. First, Duke argues that the MVP usage rate is brand new; thus, there is no elimination of an existing rate. Second, Duke contends that since the MVP usage rate is intended to change and system usage changes, there is no need to charge withdrawing members to insure investment recovery.<sup>625</sup>

311. Duke states that it is unduly discriminatory to give the Midwest ISO planners the ability and the incentive to treat one class of customers differently; in this case Midwest ISO has the incentive to approve projects in an expedited manner, in an effort to allocate those costs to withdrawing members, and thus avoid allocating the costs to remaining members. Duke argues that this is per se discrimination and it contradicts Commission precedent.<sup>626</sup>

312. Finally, Duke argues that if the Commission does find that withdrawing transmission owners have a non-usage-based obligation for MVP charges, that obligation should be limited to actual costs incurred due to construction of MVP facilities prior to withdrawal.<sup>627</sup> Duke also states that the Commission failed to address its arguments in

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<sup>624</sup> Duke Request for Rehearing at 42 (citing MVP Order, 133 FERC ¶ 61,221 at P 440-41).

<sup>625</sup> Duke Request for Rehearing at 43-44 (citing *Midwest Indep. Transmission Sys. Operator, Inc.*, 105 FERC ¶ 61,212, *order granting clarification*, 105 FERC ¶ 61,288 (2003)).

<sup>626</sup> Duke Request for Rehearing at 45-46 (citing *ISO New England, Inc., New England Power Pool*, 95 FERC ¶ 61,384, at 62,441 (2001); Order No. 890, FERC Stats. & Regs. ¶ 31,241 at P 435).

<sup>627</sup> Duke Request for Rehearing at 59-60.

the MVP Order<sup>628</sup> and that this issue is of great magnitude, and is directly related to MVP charges, thus making it well within the scope of this proceeding.<sup>629</sup>

313. FirstEnergy contends that Attachment FF, as revised, would provide that “[a] [t]ransmission [o]wner that withdraws from the Midwest ISO as a [t]ransmission [o]wner shall remain responsible for all financial obligations incurred to this Attachment FF while a [m]ember of the Midwest ISO . . . .” According to FirstEnergy, the Commission interpreted this to mean that a withdrawing transmission owner would be responsible for all financial obligations incurred with respect to the MVP Tariff provisions while a member of Midwest ISO. FirstEnergy argues that neither Midwest ISO nor the Commission identified the “MVP Tariff provisions” or other provisions of Attachment FF pursuant to which transmission owners would incur financial obligations for which they would be responsible upon withdrawal from Midwest ISO. FirstEnergy cites several examples from Filing Parties’ initial proposal to suggest that the MVP usage rate, as its name implies, is a usage-based charged reflecting actual withdrawal of energy, and that the MVP usage rate shall be charged to market participants based upon their use of the transmission system.<sup>630</sup> FirstEnergy states that while the proposal does not make clear whether the MVP usage rate will be charged to transmission customers and/or market participants that withdraw energy from the Midwest ISO system, neither of these terms is defined to include transmission owners; as such, there is no basis to impose the MVP usage rate on transmission owners that neither take transmission service under the Tariff nor withdraw energy from the Midwest ISO transmission system.

314. FirstEnergy notes that the Commission found the MVP usage rate, which allocates the costs of MVPs to load on a usage basis, to be just and reasonable, and consistent with cost causation principles. It contends that in light of these findings, the Commission could not make the same finding with respect to an allocation of MVP costs to a transmission owner that has no load and does not use the Midwest ISO system.<sup>631</sup>

315. FirstEnergy contends that although it is contrary to the usage-based cost recovery mechanism accepted in the MVP Order, Midwest ISO proposes to hold transmission owners responsible for MVP costs upon withdrawal from Midwest ISO. FirstEnergy notes that Midwest ISO has not disclosed how it would calculate a withdrawing

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<sup>628</sup> Duke Request for Rehearing at 61.

<sup>629</sup> Duke Request for Rehearing at 64.

<sup>630</sup> FirstEnergy Request for Rehearing at 8-9.

<sup>631</sup> FirstEnergy Request for Rehearing at 11.

transmission owner's financial obligation for MVP costs, or the basis on which it would impose the obligation on the withdrawing transmission owner, but that any allocation of costs could not be pursuant to the MVP usage rate.<sup>632</sup> FirstEnergy contends that Midwest ISO cannot charge a rate (or in this case, make a cost allocation) that the Commission has not accepted.

316. FirstEnergy argues that in addressing the proposed amendments to section III.A.2.i of Attachment FF, the Commission added to this confusion by conflating load and transmission ownership.<sup>633</sup> The gist of the confusion, according to FirstEnergy, is that some transmission owners are vertically integrated and serve load, and thus are also transmission customers. Others, such as FirstEnergy, do not use the transmission system. FirstEnergy seeks clarification of what MVP-related charges it will be held responsible for upon withdrawal from Midwest ISO, there being no MVP Tariff provisions cited that would require a transmission owner to bear a portion of MVP costs. FirstEnergy states that imposing MVP costs on transmission owners that do not use the Midwest ISO transmission system to serve load would be contrary to Commission findings that it is just and reasonable to allocate MVP costs to load in proportion to load's use of the transmission system.<sup>634</sup> FirstEnergy notes that the MVP Order did not address Midwest ISO's intent to impose MVP costs on withdrawing transmission owners, and that the Commission found that the process of withdrawal and the costs that a withdrawing member might face were beyond the scope of the proposal. FirstEnergy asks the Commission to clarify that it did not find, and that there was no record to support a finding, that a transmission owner that is not a load-serving entity incurs MVP costs pursuant to the "MVP tariff provisions" while a member of, or upon withdrawal from, Midwest ISO.

317. In the event that the Commission did find that transmission owners that do not take transmission service from Midwest ISO in order to serve load are financially responsible for MVP-related charges, as members or when withdrawing, FirstEnergy seeks rehearing. First FirstEnergy argues that the Tariff contains no provision allocating MVP costs to transmission owners, because 100 percent of MVP costs will be allocated to transmission customers that withdraw energy. No other proposed or accepted Tariff changes allocate MVP charges to transmission owners, either while a member of

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<sup>632</sup> FirstEnergy Request for Rehearing at 12.

<sup>633</sup> FirstEnergy Request for Rehearing at 12-13 (citing MVP Order, 133 FERC ¶ 61,221 at P 471).

<sup>634</sup> FirstEnergy Request for Rehearing at 14-15.

Midwest ISO or upon withdrawal.<sup>635</sup> Second, citing the Duquesne withdrawal from PJM, FirstEnergy points out that a usage-based rate can only be charged based on actual usage.<sup>636</sup> In Duquesne, the Commission found that PJM's tariff required that load-ratio shares be recalculated annually, thus eliminating from any cost allocation a transmission owner's zone that was no longer part of PJM. In order to remain consistent with this precedent, MVP costs cannot be charged to load after it withdraws from Midwest ISO. Third, FirstEnergy argues that it would be unduly discriminatory to impose on withdrawing transmission owners that do not take transmission service on the Midwest ISO system, even when members, MVP costs solely because of their withdrawal from Midwest ISO. The burden of proof that such a rate design is not unduly discriminatory, FirstEnergy states, falls on Filing Parties who offered no such argument.<sup>637</sup>

318. Finally, FirstEnergy argues that the Commission's approval of the substitution of "Transmission Owner" for "Party" in Attachment FF, section III.A.2.i was not based on substantial evidence or reasoned decision making. First, FirstEnergy states that this change was not a necessary part of the Tariff revisions needed to implement the MVP Proposal.<sup>638</sup> Second, FirstEnergy states that this change is not merely "cosmetic." To the extent that this change was intended to allocate new transmission costs on withdrawing transmission owners which are not load-serving entities and do not take transmission service on the Midwest ISO system, FirstEnergy argues that this change is not consistent with cost-causation principles or Commission precedent. Thus, FirstEnergy states that the change is unjust, unreasonable, and unduly discriminatory.<sup>639</sup> Further, FirstEnergy asserts that Filing Parties provided no justification for the change. FirstEnergy states that the change relieved no ambiguity, as the financial obligation of transmission owners is clearly stated in the Transmission Owners Agreement. If there were ambiguity in the

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<sup>635</sup> FirstEnergy Request for Rehearing at 16 (citing Filing Parties July 15, 2010 Filing, Tab B, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3478).

<sup>636</sup> FirstEnergy Request for Rehearing at 21-22 (citing September 3, 2008 Order, 124 FERC ¶ 61,219 at P 167).

<sup>637</sup> FirstEnergy Request for Rehearing at 22.

<sup>638</sup> FirstEnergy Request for Rehearing at 17, n.66.

<sup>639</sup> FirstEnergy Request for Rehearing at 18.

Transmission Owners Agreement, FirstEnergy states, it is the Transmission Owners Agreement that should have been amended, not the Tariff.<sup>640</sup>

319. FirstEnergy also argues that the distinction in language between the Transmission Owners Agreement and the Tariff was intentional, binding two different entities. Further, FirstEnergy states that the Transmission Owners Agreement establishing that withdrawing transmission owners are responsible for any pre-existing financial obligations is not a justification for imposing new financial obligations on transmission owners.<sup>641</sup> FirstEnergy also notes that the Commission stated in the MVP Order that the proposed MVP charges are not comparable to the administrative charges allowed as part of an exit fee; those administrative charges are reasonable and necessary to ensure that the debt service incurred by Midwest ISO was paid.<sup>642</sup>

320. Regarding cost allocation to new transmission-owning members of Midwest ISO, IPL states that it is discriminatory to charge new transmission-owning members only a fraction of MVP costs, based on their entry date, as proposed by Filing Parties and accepted by the Commission in the MVP Order. IPL states that new transmission-owning members should pay based on usage just like existing transmission-owning members. IPL states that the Commission failed to address this issue and should do so on rehearing.<sup>643</sup>

### C. Commission Determination

321. As an initial matter, we reiterate here what was stated in the MVP Order: we will not prejudge any settlement agreement between an RTO and a withdrawing member for fees that withdrawing member owes to the RTO. If a current transmission owner, transmission customer, or other Midwest ISO member chooses to withdraw its membership, the fee to be paid by that withdrawing member to Midwest ISO is a matter for those parties to negotiate, subject to Commission review. Such matters are beyond the scope of this proceeding. Thus we will deny rehearing on these issues.

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<sup>640</sup> FirstEnergy Request for Rehearing at 19.

<sup>641</sup> FirstEnergy Request for Rehearing at 20.

<sup>642</sup> FirstEnergy Request for Rehearing at 20 (citing November 22, 2002 Order, 101 FERC ¶ 61,221 at P 54).

<sup>643</sup> IPL Request for Rehearing at 36.

322. In response to Duke, AMP, and FirstEnergy, we clarify that the withdrawal language in Attachment FF puts parties on notice that once cost responsibility for transmission system upgrades are established, withdrawing members will retain any costs incurred before their withdrawal date subject to a negotiated or contested exit agreement accepted by the Commission.

323. Regarding the request for rehearing of the approval of changes to Attachment FF, we also deny rehearing. As FirstEnergy states, it is the Transmission Owners Agreement that specifies that a withdrawing transmission owner is responsible for all financial obligations incurred as a Midwest ISO member. The change made to Attachment FF, replacing “Party” with “Transmission Owner” does not change that; it merely reiterates it. Under the Transmission Owners Agreement, a withdrawing transmission owner would still be responsible for any costs incurred under Attachment FF. This change in language creates no new obligation, but clarifies language Filing Parties felt was potentially confusing. To the extent that new financial obligations are created by the changes to Attachment FF, that would be due to other changes in Attachment FF, not to this change.

324. IPL requests rehearing of the phased-in rate treatment for the loads of new transmission-owning members of Midwest ISO due to the costs of MVPs that were approved prior to their entry date. We find that Midwest ISO has not supported its phased-in rate proposal, including why new transmission-owning members’ loads should be responsible for 25, 50, and then 75 percent of the usage charges associated with previously-approved MVPs during the first three years after they join Midwest ISO.

325. Accordingly, we will grant IPL’s rehearing request, and we will reject the Tariff revisions regarding the proposed phased-in rate treatment. Our rejection is made without prejudice to Midwest ISO submitting future filing(s) under section 205 of the FPA to address any transmission issues associated with the integration of new transmission-owning members of Midwest ISO into the Midwest ISO regional transmission planning process and cost allocation, along with appropriate support for its proposal. We will require Midwest ISO to submit, in a compliance filing due within 30 days of the date of this order, proposed Tariff revisions to remove the provisions regarding phased-in MVP rate treatment for new transmission-owning members of Midwest ISO.<sup>644</sup>

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<sup>644</sup> See Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, First Revised Sheet No. 3480, Original Sheet Nos. 3480A, 3480B.



**IX. Joint Ownership of Transmission Projects and Eligibility for MVP Classification and Cost Allocation**

**A. MVP Order**

326. Under Filing Parties' proposed revisions to Attachment FF, a new transmission-owning member's pre-existing planned transmission projects, pending at the time it joins Midwest ISO, will not be subject to regional cost sharing under the Tariff. Midwest TDUs argued that the proposal should be revised to accommodate joint ownership arrangements. The MVP Order held that concerns about which projects of a new transmission-owning member will be subject to the Midwest ISO regional transmission planning process, and which of its transmission projects will be subject to cost allocation pursuant to Attachment FF, should be raised when a prospective transmission-owning member applies to join Midwest ISO. The Commission further held that insofar as Midwest TDUs seek compensation for facilities prior to becoming a transmission-owning member and transferring control of such facilities to Midwest ISO, that request is beyond the scope of this proceeding.<sup>645</sup>

**B. Request for Rehearing**

327. Midwest TDUs reiterate their request that the Commission clarify that Midwest ISO should afford the same regional cost allocation treatment to the joint ownership investments of both Midwest ISO transmission-dependent utilities that become new Midwest ISO transmission owners, and pre-existing Midwest ISO transmission owners, in the same projects. At a minimum, state Midwest TDUs, the Commission should make clear that it interprets the Tariff to leave open the issue of whether regional cost sharing will be available to a prospective transmission-owning member, or modify the Tariff to so provide. They also reiterate their argument that the Commission should direct Midwest ISO to establish procedures to enable prospective joint owners of major new Midwest ISO-planned transmission projects to receive timely decisions on whether their transmission investment will be eligible for regional cost sharing.<sup>646</sup>

328. Midwest TDUs state that they do not seek to require Midwest ISO to provide compensation or regional cost sharing for jointly-developed transmission expansions, for periods prior to the time that the transmission-dependent utility joint owner becomes a Midwest ISO transmission owner. Rather, Midwest TDUs reiterate their request for clarification or modification of the proposed Tariff language, so that if a transmission-

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<sup>645</sup> MVP Order, 133 FERC ¶ 61,221 at P 477.

<sup>646</sup> Midwest TDUs Request for Rehearing at 7-8.

dependent utility joint owner becomes a Midwest ISO transmission owner, that new transmission-owning member's joint ownership investment will be treated exactly the same as the joint ownership investments of pre-existing transmission-owning members in the same facilities.

329. Midwest TDUs reiterate that their requested clarification is necessary to protect transmission investments already made by Midwest TDUs in reliance on Midwest ISO assurances, and to encourage joint ownership which often is crucial to the successful permitting and siting of major transmission projects. Midwest TDUs state that a cost allocation methodology that financially punishes either transmission owners or transmission-dependent utilities that voluntarily share ownership of regional projects is a giant step in the wrong direction.<sup>647</sup>

330. Midwest TDUs reiterate their disagreement with Midwest ISO's arguments, made in its answer to the protests underlying the MVP Order, that: 1) transmission projects that predate a prospective transmission owner's entry into Midwest ISO were not planned as part of Midwest ISO's regional planning process; and 2) currently, new transmission-owning members are not assigned costs for regional projects submitted to the Midwest ISO Board of Directors prior to the time they join Midwest ISO.<sup>648</sup> Regarding the first argument, Midwest TDUs reiterate that some of the largest facilities planned as part of Midwest ISO's regional transmission planning process will be jointly owned by existing Midwest ISO transmission-dependent utilities prior to becoming Midwest ISO transmission owners (e.g., CapX 2020 Projects). Midwest TDUs reiterate that the second argument is inapplicable to transmission-dependent utilities that have long shared the full costs of the Midwest ISO transmission system, including any RECB costs (e.g., Wisconsin Public Power, Inc. and Missouri River are load-serving members that have paid their full allocated share of the costs of the transmission grid).<sup>649</sup>

### **C. Commission Determination**

331. Midwest TDUs explain that they do not seek to require Midwest ISO to provide compensation or regional cost sharing for jointly-developed transmission expansions, for periods prior to the time that the transmission-dependent utility joint owner becomes a Midwest ISO transmission owner. But, otherwise, they reiterate the arguments from their

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<sup>647</sup> Midwest TDUs Request for Rehearing at 8, 9 & 13.

<sup>648</sup> Midwest TDUs Request for Rehearing at 9 (citing Midwest ISO October 18, 2010 Answer at 82-83).

<sup>649</sup> Midwest TDUs Request for Rehearing at 10-11.

initial protest and answer concerning their request for clarification of or modification of the proposed Tariff revisions. Accordingly, for the reasons stated in the MVP Order, we are not persuaded to change our determination that Midwest TDUs' concerns are outside of the scope of this proceeding.

**X. Effective Date and Request for Hearing**

**A. Effective Date for the MVP Proposal**

**1. MVP Order**

332. In the MVP Order, the Commission granted waiver of the 60-day prior notice requirement to permit an effective date of July 16, 2010 for the MVP Proposal. The Commission explained that where it has directed an application to conduct a stakeholder process that would result in the applicant making a new filing, as the Commission did in the October 23, 2009 Order, the Commission has found that stakeholders were put on notice of such filing.<sup>650</sup> In reaching this conclusion, the Commission rejected arguments that stakeholders were not afforded sufficient opportunity to review the MVP Proposal, or that the alleged inadequacy of the stakeholder process should provide a basis for delaying the effective date. The Commission noted that stakeholders also had the opportunity to challenge the MVP Proposal through the notice and comment procedures in this proceeding, including an extended time for comments.

**2. Requests for Rehearing**

333. AMP argues that the Commission erred in granting Midwest ISO's request for waiver of the 60-day notice requirement because, contrary to the Commission's applicable regulations, Midwest ISO failed to demonstrate good cause for the waiver.<sup>651</sup> AMP asserts that Midwest ISO solely requested waiver in order to apply the MVP Criteria to transmission projects included in the 2010 MTEP, and notes that a July 16, 2010 effective date would allow Midwest ISO to impose a share of MVP costs on FirstEnergy/ATSI and Duke prior to their withdrawal from Midwest ISO. AMP alleges that Midwest ISO's request for waiver is a vehicle for gaining the ability to impose MVP charges on exiting transmission owners in order to benefit the remaining Midwest ISO

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<sup>650</sup> MVP Order, 133 FERC ¶ 61,221 at P 503.

<sup>651</sup> AMP Request for Rehearing at 20.

transmission owners.<sup>652</sup> According to AMP, Midwest ISO's justification does not constitute good cause for waiver.

334. FirstEnergy also challenges the Commission's decision to waive the 60-day notice requirement, arguing that none of the circumstances addressed in *Central Hudson* are present in this case.<sup>653</sup> While FirstEnergy acknowledges that Midwest ISO stakeholders knew that some long-term cost allocation proposal would be filed on July 15, 2010, FirstEnergy states that stakeholders had no way of knowing what that proposal would be or include.<sup>654</sup> FirstEnergy argues that the MVP concept was introduced late in the stakeholder process, and that the potential impacts of the MVP Proposal on withdrawing Midwest ISO members were never subject to the stakeholder process. FirstEnergy claims that although the Commission found in the October 23, 2009 Order that the emergency of the imminent withdrawal of Otter Tail and MDU was a sufficient showing of good cause for waiver, such an emergency does not exist with respect to the MVP Proposal and waiver should be denied.<sup>655</sup>

335. IPL asserts that although the Commission has fixed the effective date of the filing as July 16, 2010, a significant portion of the filing is still to come – specifically, the compliance filing directed by the Commission that will clarify that Midwest ISO will review MVPs on a portfolio basis. According to IPL, the Commission has adopted an effective date for the MVP Proposal that predates the filing of and its review of a key portion of that proposal. IPL claims that the July 16, 2010 effective date violates court precedent, which establishes that “rates are fixed when the compliance filing is accepted.”<sup>656</sup>

### **3. Commission Determination**

336. We deny rehearing. AMP and FirstEnergy make no new arguments on rehearing, and we are not persuaded to change the Commission's determination based on their

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<sup>652</sup> AMP Request for Rehearing at 20.

<sup>653</sup> FirstEnergy Request for Rehearing at 30.

<sup>654</sup> FirstEnergy Request for Rehearing at 29.

<sup>655</sup> FirstEnergy Request for Rehearing at 31.

<sup>656</sup> IPL Request for Rehearing at 29 (citing *Electrical District No. 1 v. FERC*, 774 F.2d 490 (D.C. Cir. 1985); *Public Service Co. of New Mexico v. FERC*, 832 F.2d 1201, 1223 (10th Cir. 1987)).

positions. As the District of Columbia Circuit has held, “[n]otice to affected parties, we have explained, ‘changes what would be purely retroactive ratemaking into a functionally prospective process by placing the relevant audience on notice at the outset that the rates being promulgated are provisional only and subject to later revision.’”<sup>657</sup> The Commission’s acceptance of the Interim Cost Allocation Proposal, subject to Filing Parties filing a new cost allocation proposal on or before July 15, 2010, provided sufficient notice to stakeholders of a change in the cost allocation methodology.

337. Further, IPL’s argument is misplaced. The cases IPL relies upon were FPA section 206 proceedings and involved proposed changes in rates that could be changed prospectively only. However, the instant filing here is distinguishable from those cases. Filing Parties submitted the instant filing pursuant to FPA section 205, which involves less strict procedures than section 206.<sup>658</sup> The FPA grants the Commission authority to waive the 60-day prior notice requirement for section 205 filings for good cause shown. Further, IPL is incorrect in its assumption that the Commission fixed the rate before it knew what was being proposed (i.e., IPL misinterpreted the compliance directive as if the Commission had required Filing Parties to submit and justify a portfolio proposal). Rather, Filing Parties explained their portfolio approach in the course of clarifying their MVP Proposal in their answer to the protests; and, in turn, the Commission cited the portfolio approach, as explained by Filing Parties’ answer, as a factor in its acceptance of the MVP Proposal. The purpose of that compliance directive was to ensure that Filing Parties reflect this understanding of this aspect of the MVP Proposal in the Tariff. Therefore, we continue to find good cause for granting waiver of the prior notice requirement.

## **B. Request for Hearing and Issues of Material Fact**

### **1. MVP Order**

338. Several parties requested that the Commission suspend the MVP Proposal and set it for hearing.<sup>659</sup> According to some of these parties, the MVP Proposal raised numerous

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<sup>657</sup> *NSTAR Elec. & Gas Corp. v. FERC*, 481 F.3d 794, 801 (D.C. Cir. 2007) (citing *Consolidated Edison Co. of N.Y. v. FERC*, 347 F.3d 964, 969 (D.C. Cir. 2003)).

<sup>658</sup> See *City of Anaheim, California, et al. v. FERC*, 558 F.3d 521, 525 (D.C. Cir. 2009) (“§ 206 involves an entirely different – and stricter – set of procedures than § 205”).

<sup>659</sup> MVP Order, 133 FERC ¶ 61,221 at P 483.

factual issues that required discovery and an evidentiary hearing. The Commission declined these requests by conditionally accepting the MVP Proposal.

## **2. Requests for Rehearing**

339. IPL argues that the Commission was obligated to conduct an evidentiary hearing because the MVP Proposal raised genuine issues of material fact that could not be determined based on the written record.<sup>660</sup> IPL parallels the Commission's acceptance of the MVP Proposal to a grant of summary judgment, and asserts that there was no basis for approval of the MVP Proposal because Midwest ISO failed to meet its burden of proof regarding cost causation and benefits. MISO Northeast Transmission Customers also challenge the Commission's acceptance of the MVP Proposal without a hearing to resolve disputed issues of material fact. MISO Northeast Transmission Customers assert that such approval is contrary to Commission precedent. In addition, MISO Northeast Transmission Customers state that they submitted affidavits into the record which contradict several specific assertions by Midwest ISO in the MVP Proposal, but that the Commission did not address the issues raised by this evidence in the MVP Order.

## **3. Commission Determination**

340. We deny rehearing. As the Commission has held:

The courts have repeatedly recognized that the Commission has broad discretion in managing its proceedings. [Citations omitted.] The Commission may properly deny an evidentiary hearing if the issues, even disputed issues, may be adequately resolved on the written record, at least where there are no issues of motive, intent, or credibility.<sup>661</sup>

No issue of material fact was present that could not be resolved on the basis of the written record in this proceeding.

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<sup>660</sup> IPL Request for Rehearing at 39.

<sup>661</sup> *Southern California Edison Co.*, 109 FERC ¶ 61,086, at P 38 (2004) (citing *Texaco, Inc. v. FERC*, 148 F.3d 1091, 1100 (D.C. Cir. 1998)), *order on reh'g*, 110 FERC ¶ 61,319 (2005).

## **XI. Compliance Filing**

### **A. The MVP Order Compliance Filing Directive**

341. The Commission's acceptance of the MVP Proposal was conditioned on Filing Parties submitting a compliance filing that: 1) states in the Tariff that Midwest ISO will review MVPs on a portfolio basis; 2) revises the Tariff to ensure that the MVP usage rate is not applied to export or wheel-through transactions that sink in the PJM region; 3) provides an explanation as to how the proposed Tariff language relating to Monthly Net Actual Energy Withdrawal and Demand Response Resources and Emergency Demand Response resources is consistent with the rate design objectives stated by Filing Parties, and why it does not result in double netting; and 4) revises the Tariff to clarify that the divisor of the MVP usage charge in Attachment MM reflects the MWhs of grandfathered service provided by each transmission owner to reflect an allocation of the costs of MVPs recovered under grandfathered agreements. The Commission also required Filing Parties to submit a compliance filing no later than June 1, 2011 to describe what changes are required to its allocation of Financial Transmission Rights and Auction Revenue Rights in order to reflect the usage-based allocation of MVP costs.<sup>662</sup> Finally, the Commission required Midwest ISO to file ongoing annual informational reports with the Commission describing the selection of MVPs, including the achievements and shortcomings of the MVP selection process, after each full planning cycle has been completed.

342. In conditionally accepting the MVP Proposal, the Commission also relied upon Filing Parties' concept for the portfolio approach, which they described in their answer to the protests and comments. The Commission found that the portfolio approach would "help Midwest ISO to prioritize its transmission expansion projects in such a way as to ensure global benefits from the projects afforded regional cost sharing and maximize the number of system users who will share in the benefits."<sup>663</sup> But the Commission stated: "We are concerned, however, that Midwest ISO has not stated its portfolio approach in

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<sup>662</sup> On May 12, 2011, Midwest ISO filed a Motion for Extension of Time until March 1, 2012, to make the compliance filing addressing its allocation of congestion rights for MVPs. According to Midwest ISO, additional time is needed in order to allow it to continue to work through the stakeholder process to evaluate different proposals regarding the allocation of these congestion rights. The motion was granted on May 23, 2011.

<sup>663</sup> MVP Order, 133 FERC ¶ 61,221 at P 221.

the Tariff. We therefore require Midwest ISO to submit . . . a compliance filing to revise the Tariff to state that MVPs will be reviewed on a portfolio basis.”<sup>664</sup>

**B. The Compliance Filing**

343. Filing Parties’ compliance filing proposes to revise Attachment FF of the Tariff to provide that a “Multi Value Project must be evaluated as part of a portfolio of projects, as designated in the transmission expansion process, whose benefits accrue throughout the footprint.” And it adds a new definition to Module A: “Portfolio: For Multi-Value Project purposes, means two or more Multi-Value Projects proposed to be located in one or more Transmission Pricing Zones that, when evaluated together, are expected to result in regional benefits.” The compliance filing revises Schedule 26-A and Attachment MM to explicitly state that the MVP usage rate does not apply to export or wheel-through transactions that sink in the PJM region. It also submits updates to Attachment MM in order to include the MWhs of grandfathered service in the divisor of the MVP usage rate.<sup>665</sup>

344. Finally, the compliance filing explains that the proposed definition of Monthly Net Actual Energy Withdrawal does not result in double netting because energy withdrawals are not yet netted against energy injections at the level of hourly average metered volumes. Instead, Filing Parties note that metered volumes involve Actual Energy Withdrawals, which section 1.2 of the Tariff defines as including, among other things, “Actual Energy Inject[ion]s within the Load Zone for the Demand Response Resources and [Emergency Demand Response] resources.” The compliance filing states that the “Metered volume” referred to in the definition of Monthly Net Actual Energy Withdrawal is equal to its Actual Energy Withdrawal. Filing Parties state that netting only occurs when the hourly time-weighted actual energy injections for demand response resources are subtracted from the Actual Energy Withdrawals in order to avoid allocating MVP related charges to load zones that contain Demand Response Resources and Emergency Demand Response resources for energy that is not consumed.<sup>666</sup>

345. Notice of the compliance filing was published in the *Federal Register*, 76 Fed. Reg. 10,345 (2011), with comments due on or before March 7, 2011. On March 7, 2011, protests were filed by: Exelon; Consumers Energy; Hoosier-SIPC; and IPL. On

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<sup>664</sup> MVP Order, 133 FERC ¶ 61,221 at P 223 (quoting *Illinois Commerce Commission*, 576 F.3d at 477).

<sup>665</sup> Filing Parties February 14, 2011 Compliance Filing, Transmittal Letter at 3.

<sup>666</sup> Filing Parties February 14, 2011 Compliance Filing, Transmittal Letter at 3.



March 7, 2011, comments were filed by: MICH-CARE; Wisconsin Commission; and Wisconsin Electric Power Company (Wisconsin Electric). On March 10, 2011, Illinois Commission filed a motion to file comments out of time and comments. On March 22, 2011, Filing Parties filed an answer.<sup>667</sup>

**C. Procedural Matters**

346. We will accept Illinois Commission's late comments given its interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2011), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Filing Parties' answer because it has provided information that assisted us in our decision-making process.

**D. Portfolio/MVP Definition**

**1. Comments and Protests**

347. Numerous parties argue that the definition of "Portfolio" is insufficient or does not comply with the MVP Order. Exelon, IPL, Consumers Energy, Hoosier-SIPC, Illinois Commission, and Wisconsin Commission all argue, albeit in different terms, that the proposed definition of Portfolio fails to articulate that benefits will be spread across the entire multi-state Midwest ISO transmission system.<sup>668</sup> Additionally, parties such as Exelon, IPL, and Hoosier-SIPC argue that the definition is insufficient because it fails to explicitly require a Portfolio to contain projects in multiple pricing zones or in multiple planning sub-regions.<sup>669</sup> Exelon suggests that because a Portfolio could consist of two projects within a single pricing zone, Midwest ISO could break the Michigan Thumb Project into two projects and call it a Portfolio.<sup>670</sup> IPL argues that the definition of

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<sup>667</sup> For the purposes of this answer, Midwest ISO Transmission Owners do not include SMMPA or Duke Energy for Duke and DEI.

<sup>668</sup> Exelon Compliance Protest at 3; IPL Compliance Protest at 3-5; Consumers Energy Compliance Protest at 3; Hoosier-SIPC Compliance Protest at 4; Illinois Commission Compliance Comments at 5-8; and Wisconsin Commission Compliance Comments at 2-3.

<sup>669</sup> Exelon Compliance Protest at 2; IPL Compliance Protest at 3, 6; and Hoosier-SIPC Compliance Protest at 4.

<sup>670</sup> Exelon Compliance Protest at 3.

Portfolio cannot meet the requirement of benefit showings for cost allocation set by *Illinois Commerce Commission*.<sup>671</sup>

348. IPL and Hoosier-SIPC also contend that Midwest ISO's proposed change to Attachment FF pertaining to the portfolio requirement should be rejected, because it is too vague and subject to too wide an interpretation to provide any comfort that the portfolio approach will have any real substance. IPL claims that the Commission should direct Midwest ISO to supplement the proposed changes with specifics regarding the broadly spread benefits, similar to the changes it proposes for the definition of Portfolio.<sup>672</sup>

349. Hoosier-SIPC are concerned that Midwest ISO uses the term "regional benefits" in the definition of Portfolio but refers to benefits of a Portfolio that are "spread broadly across the footprint" in the proposed addition to Attachment FF. They request that if there is no intended difference of the meaning of these two terms the Commission should require Midwest ISO to use one term, not both. Conversely, Hoosier-SIPC request that if a difference is intended that the Commission require Midwest ISO to define both terms. Hoosier-SIPC also request that the Commission require Filing Parties to clarify the relationship between the proposed portfolio requirement and the three criteria that a project must meet to achieve MVP status.<sup>673</sup>

350. MICH-CARE states that it requires clarification as to whether the Commission intends for all transmission owners to operate under a single approach to determining which projects are to be submitted to be MVPs, or whether each transmission owner has the discretion to determine whether a particular network upgrade satisfies its particular definition of an MVP. MICH-CARE suggests that the criteria for an MVP project and an MVP portfolio should be uniform and transparent so all transmission owners can be held to the same standards.<sup>674</sup>

351. MICH-CARE suggests revising Midwest ISO's proposed definition of Portfolio as follows:

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<sup>671</sup> IPL Compliance Protest at 5.

<sup>672</sup> IPL Compliance Protest at 5-7 and Hoosier-SIPC Compliance Protest at 4.

<sup>673</sup> Hoosier-SIPC Compliance Protest at 4.

<sup>674</sup> MICH-CARE Compliance Comments at 4-5.

**1.513a Portfolio:** For Multi-Value Project purposes, means two or more Multi-Value Projects proposed to be located in one or more Transmission Pricing Zones that, when evaluated together, ~~are expected to result in~~ regional benefits.<sup>[675]</sup>

352. MICH-CARE further states that Midwest ISO should be required to clarify that the word “whose” is intended to apply to the “Portfolio” in the revised description of MVPs. MICH-CARE states that this clarification would alleviate any confusion so that the phrase “process whose benefits are spread broadly across the footprint” means “process where the Portfolio’s benefits are spread broadly across the footprint.”<sup>676</sup>

353. Additionally, MICH-CARE is concerned about the “enhanced” importance of the criterion “common set of Transmission issues.”<sup>677</sup> MICH-CARE maintains that since “common set” is not defined, there may be an “inappropriately overbroad clustering” of network upgrade projects under the MVP portfolio approach. MICH-CARE is concerned that Midwest ISO gains too much discretion on a “common set of Transmission issues” when language concerning portfolios is added to the Tariff, as proposed by Midwest ISO. Therefore, MICH-CARE requests that the Commission impose a more stringent definition of “common set of Transmission Issues.”<sup>678</sup>

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<sup>675</sup> MICH-CARE Compliance Comments at 6 (citing Filing Parties February 14, 2011 Compliance Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Sheet No. 246).

<sup>676</sup> MICH-CARE Compliance Comments at 6 (citing Filing Parties February 14, 2011 Compliance Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Substitute Original Sheet No. 3451A).

<sup>677</sup> MICH-CARE Compliance Comments at 5-6. The Midwest ISO Tariff defines MVPs as “One or more Network Upgrades that address a common set of Transmission Issues and satisfy the conditions listed in [s]ections II.C.1, II.C.2, and II.C.3 of Attachment FF.” See Filing Parties February 14, 2011 Compliance Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Substitute Original Sheet Nos. 218 and 3451).

<sup>678</sup> MICH-CARE Compliance Comments at 5.

354. Wisconsin Commission argues that Midwest ISO's filing is incomplete because it fails to address the evaluation of benefits to load external to the Midwest ISO footprint, and neglects to state whether or not the "benefits" are net of "costs."<sup>679</sup>

## 2. Filing Parties' Answer

355. Filing Parties state that most of the protests and comments submitted amount to thinly-veiled attempts to challenge aspects of the MVP Order that should have instead been submitted in rehearing requests and, therefore, are improper in this compliance filing proceeding.<sup>680</sup> Filing Parties argue that the only issue in the compliance filing proceeding is whether the compliance filing complies with the MVP Order, and since it complies with the directives of the MVP Order and no party has demonstrated otherwise, the Commission should accept the instant compliance filing and reject the improper, untimely attacks on the MVP Order.<sup>681</sup>

356. For example, Filing Parties state that IPL uses the *Illinois Commerce Commission* decision as a basis for criticizing Filing Parties compliance with the MVP Order's portfolio directive and, in effect, reiterates IPL's position in its request for rehearing of the portfolio directive itself.<sup>682</sup> Filing Parties state that such rehearing-type arguments should not be entertained in this compliance proceeding. Additionally, Filing Parties argue that even if the Commission were to entertain IPL's argument, *Illinois Commerce Commission* is wholly distinguishable from this compliance proceeding and its holding is fully consistent with the MVP Order.<sup>683</sup>

357. In response to several protests contending that the portfolio language added to Attachment FF needs to be made more specific, transparent, and uniform among all transmission owners, Filing Parties state that these protests failed to indicate precisely in what way the compliance filing fails to comply with the MVP Order. Filing Parties state that the MVP Order directed Filing Parties to revise the Tariff to "state that MVPs will be reviewed on a portfolio basis," which Filing Parties argues constitutes the entirety of the Commission's compliance requirement on this subject. Filing Parties state that the

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<sup>679</sup> Wisconsin Commission Compliance Protest at 2-4.

<sup>680</sup> Filing Parties Compliance Answer at 4.

<sup>681</sup> Filing Parties Compliance Answer at 4.

<sup>682</sup> Filing Parties Compliance Answer at 5.

<sup>683</sup> Filing Parties Compliance Answer at 5-6.

proposed Attachment FF amendment fully meets this requirement, and that the revisions further elaborate on this approach by: 1) adding “Portfolio” as a defined term; 2) noting that MVP designation is part of the transmission planning process; and 3) specifying that the resulting benefits should be “spread broadly across the footprint.”<sup>684</sup>

358. Filing Parties state, in response to several protests claiming that the proposed definition of “Portfolio” is inadequate because it allows a portfolio to consist of as few as two projects, permits them to be located in the same pricing zone, and does not define the phrase “regional benefits,” that these arguments lack merit and should be rejected.<sup>685</sup> Filing Parties state that the MVP Order directed Filing Parties to revise the Tariff to state that the review of MVPs will be based on a “portfolio” approach. As such, Filing Parties state that the proposed definition reflects how that term was described in Filing Parties’ Answer<sup>686</sup> and endorsed by the MVP Order, in that the review of MVPs should not be “focused on one” project alone, but rather address a “package” of projects that “collectively” result in “regional benefits.” Filing Parties argue that the proposed definition frames this concept in numerical terms by providing that a portfolio should consist of “two or more” MVPs that will be “evaluated together.”<sup>687</sup>

359. Filing Parties state that the design, number, and phasing of MVPs will be based on valid logistical concerns, stakeholder and system needs, and other relevant considerations, rather than being decided in a contrived manner merely to achieve project multiplicity to satisfy the requirement that there be at least two MVPs in a portfolio. Filing Parties argue that Exelon’s question about a hypothetical break-up of the Michigan Thumb Project to produce a “portfolio” of MVPs is purely conjectural.<sup>688</sup>

360. Filing Parties explain that the MVP Order did not require that the MVPs comprising a portfolio always be located in different pricing zones. On the contrary, Filing Parties state that the Commission, in finding that “the portfolio approach resolves the concerns of the protestors who propose disparate treatment for certain portions of Filing Parties,” the MVP Order specifically pointed out “the potential for upgrades in one

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<sup>684</sup> Filing Parties Compliance Answer at 6-7.

<sup>685</sup> Filing Parties Compliance Answer at 9-10.

<sup>686</sup> Filing Parties Compliance Answer at 10 (citing Filing Parties October 18, 2010 Answer at 14-16).

<sup>687</sup> Filing Parties Compliance Answer at 10.

<sup>688</sup> Filing Parties Compliance Answer at 11.

area to improve the entire system.”<sup>689</sup> Filing Parties state that with each of the three MVP Criteria, the portfolio approach requires that the scope of project benefits reach more than one pricing zone, but it does not mandate that the site of the projects be in two or more pricing zones. Moreover, Filing Parties aver that under the portfolio framework, greater regional benefits can be expected from two or more MVPs, even if the portfolio projects are located within the same pricing zone.<sup>690</sup>

361. Filing Parties state that contrary to the protests that criticize the proposed Portfolio definition’s use of the phrase “regional benefits,” the phrase is appropriate because it is language used in the MVP Order to characterize the scope of benefits from MVPs. Filing Parties clarify, in any event, that the definition’s reference to regional benefits is not intended to mean anything significantly different than the proposed Attachment FF revision’s description of such benefits as “spread broadly across the footprint” under the portfolio approach.<sup>691</sup>

362. With regard to MICH-CARE’s suggestion to delete the expectation language from the portfolio definition, Filing Parties state that this language is inconsistent with the chronological sequence of project planning and implementation. Filing Parties explain that when a planned project is being reviewed prior to its execution, all benefit determinations can only be described as expectations because the review itself, whether of an individual project or of several “evaluated together,” predicts reasonably anticipated future benefits.<sup>692</sup>

363. In response to Hoosier-SIPC’s claim that the addition of the portfolio requirement creates ambiguity on how the MVP Criteria will be applied, Filing Parties state that not only is it an untimely request for rehearing of the MVP Order, but that the proposed Attachment FF amendment contains two defined terms that clearly indicate the applicability of the MVP Criteria to each project comprising a portfolio.<sup>693</sup> First, Filing Parties state that the Attachment FF revision uses the term “Portfolio,” which, as proposed, only consists of MVPs. Second, Filing Parties state that the Attachment FF

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<sup>689</sup> Filing Parties Compliance Answer at 11 (citing MVP Order, 133 FERC ¶ 61,221 at P 222).

<sup>690</sup> Filing Parties Compliance Answer at 12.

<sup>691</sup> Filing Parties Compliance Answer at 12-13.

<sup>692</sup> Filing Parties Compliance Answer at 13.

<sup>693</sup> Filing Parties Compliance Answer at 13.

modification also includes the term “Multi-Value Project,” which by definition, and as described in the immediately ensuing Attachment FF language itself, requires each MVP to satisfy at least one of the MVP Criteria. Filing Parties argues that the Attachment FF revision, therefore, sufficiently provides that a portfolio consists of at least two MVPs that each meet one of the three MVP Criteria.<sup>694</sup>

364. Likewise, Filing Parties state that Wisconsin Commission’s complaint that Attachment FF’s language fails to state that the MVP benefits should be net benefits (i.e., net of MVP costs) is an improper request for rehearing that should be rejected. Filing Parties state that the MVP Order did not require Filing Parties to add netting language in connection with the portfolio approach.<sup>695</sup>

365. Finally, with regard to Wisconsin Commission’s argument that the Attachment FF portfolio amendment limits the benefits dispersion analysis to Midwest ISO’s footprint and thereby results in undue preference to external load, Filing Parties state that this argument should be rejected as nothing more than a further attempt to reiterate Wisconsin Commission’s rehearing arguments that there should be wheel-through or export charges for external loads benefiting from MVPs.<sup>696</sup>

### **3. Commission Determination**

366. In the MVP Order, the Commission directed Filing Parties to revise Tariff language to state that MVPs will be reviewed on a portfolio basis.<sup>697</sup> In response to this directive, Filing Parties propose a definition for the term Portfolio and new language in section II.C of Attachment FF stating that an MVP “must be evaluated as part of a Portfolio of projects, as designated in the transmission expansion planning process, whose benefits are spread broadly across the footprint.”<sup>698</sup> We conditionally accept these revisions as they satisfy the direction provided by the Commission in the MVP Order, subject to the compliance filing discussed below.

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<sup>694</sup> Filing Parties Compliance Answer at 14.

<sup>695</sup> Filing Parties Compliance Answer at 7.

<sup>696</sup> Filing Parties Compliance Answer at 9.

<sup>697</sup> MVP Order, 133 FERC ¶ 61,221 at P 49.

<sup>698</sup> See Filing Parties February 14, 2011 Compliance Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Second Revised Tariff Sheet No. 246 and Substitute Original Sheet No. 3451A.

367. We reject all of the various protests concerning the proposed definition of Portfolio and the relationship between that definition and the Tariff language in section II.C of Attachment FF. Filing Parties' proposed revisions accomplish precisely what the Commission intended – to clearly articulate what a Portfolio is and that the aggregation of MVPs into a Portfolio will occur in Midwest ISO's MTEP process in a manner that benefits will accrue throughout the entire Midwest ISO region. Arguments put forth by Exelon, IPL, Consumers Energy, Hoosier-SIPC, Illinois Commission and Wisconsin Commission that the compliance filing does not provide for benefits across the Midwest ISO footprint are without merit and appear to be designed to delay the implementation of the MVP methodology.

368. In addition, we reject requests to modify the definition of Portfolio, including Hoosier-SIPC's and/or Wisconsin Commission's requests that the Commission require Midwest ISO to specify how many pricing zones must benefit, the extent to which such benefits must be compared to the associated costs for each pricing zone, and the relationship between the proposed portfolio requirement and the three MVP Criteria.<sup>699</sup> We find these changes unnecessary and, in any case, beyond the scope of the compliance directives in the MVP Order.

369. With respect to the argument that the proposed definition of Portfolio is insufficient because Midwest ISO could simply break a project, such as the Michigan Thumb Project, into two projects and call it a Portfolio, we agree with Filing Parties that this argument is speculative. Additionally, even if it was not speculative, Midwest ISO's Order No. 890-compliant MTEP process provides the mechanisms necessary to ensure that such types of gaming can be challenged and prevented by interested parties.

370. We find that there is no reason to clarify whether all transmission owners will operate under a single approach to determining which projects are to be submitted to be MVPs, or whether each transmission owner has the discretion to determine whether a particular transmission expansion project satisfies its particular definition of an MVP as requested by MICH-CARE. Midwest ISO has a Order No. 890-compliant transmission planning methodology which governs the process for planning transmission expansion projects. All interested parties are subject to the provisions of this transmission planning process and, therefore, cannot operate based on their own discretion.

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<sup>699</sup> Hoosier-SIPC Compliance Protest at 4-5; Wisconsin Commission Compliance Comments at 2-4.



**E. MVP Usage Rate****1. Comments**

371. Wisconsin Electric expresses concern over the changes that Midwest ISO made to the definition of MVP usage rate. It argues that the first clause of the provision could be interpreted as excluding from the MVP usage rate export schedules and wheel-through schedules. Wisconsin Electric suggests the following language to ensure that what the Commission has determined is properly included and excluded in the MVP usage rate, as follows:

The [MVP usage rate] is a Midwest ISO system-wide rate charged via Schedule 26-A to Export Schedules, Through Schedules, and Monthly Net Actual Energy Withdrawals excluding those Monthly Net Actual Energy Withdrawals provided under [grandfathered agreements], ~~Export Schedules, and Through Schedules~~; provided, however, that the [MVP usage rate] shall not be charged to any Export Schedule or Through Schedule for deliveries that sink in the transmission system operated by [PJM].<sup>700</sup>

372. MICH-CARE states that it interprets Filing Parties' response to the Commission's concern that a mismatch may exist in the hourly average metered volumes used in Midwest ISO's cost allocation process to mean that zones with Demand Response Resources or Emergency Demand Response resources will be treated differently.<sup>701</sup> MICH-CARE argues that if energy withdrawals are not netted against energy injections at the level of hourly average metered volumes a faulty analysis could result. Further, MICH-CARE argues that the need for transmission network upgrades by zones could be

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<sup>700</sup> Wisconsin Electric Compliance Comments at 2 (citing Filing Parties February 14, 2011 Compliance Filing, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Substitute Original Sheet No. 3784). The changes shown in blackline refer to revisions proposed by Wisconsin Electric to the new language submitted by Filing Parties to comply with the Commission's directives.

<sup>701</sup> Filing Parties explained that the proposed definition of Monthly Net Actual Energy Withdrawal does not result in double netting because energy withdrawals are not yet netted against energy injections at the level of hourly average metered volumes. Filing Parties February 14, 2011 Compliance Filing, Transmittal Letter at 3.

misleading unless all zones are evaluated using the same methodology to define metered volumes.<sup>702</sup>

373. MICH-CARE is concerned that allocating 100 percent of MVP costs to MWh will result in a subsidy from Michigan ratepayers to others, especially given the Tariff change to the denominator of the MVP usage rate, which excludes the MWh that flow to PJM. MICH-CARE states that there is a mismatch between the hourly metered volumes across zones such that the MWh that flow through pseudo-ties may not be appropriately included in the MVP usage rate calculation in the present language.<sup>703</sup> Finally, MICH-CARE states that the MWh that are covered by grandfathered agreements may also result in cost-shifting that is exacerbated under the MVP portfolio approach when the grandfathered agreements are renegotiated or sunset.<sup>704</sup>

## 2. Filing Parties' Answer

374. In response to Wisconsin Electric's proposed revisions to Attachment FF to clarify that MVP charges can be imposed on export and wheel-through transactions not sinking in PJM, Filing Parties agree to revise this language, as proposed by Wisconsin Electric, in a further compliance filing.<sup>705</sup>

375. Filing Parties state that MICH-CARE's claims of disparate netting of Actual Energy Injections and Actual Energy Withdrawals for pricing zones with Demand Response Resources and Emergency Demand Response resources, compared to pricing zones without such resources, are irrelevant to the instant compliance filing. Filing Parties state that the MVP Order's requirement pertaining to Demand Response Resources and Emergency Demand Response resources arose from the Commission's concern about potential double-netting, not from any comparison of how metered

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<sup>702</sup> MICH-CARE Compliance Comments at 3, 5.

<sup>703</sup> MICH-CARE Compliance Comments at 6-7.

<sup>704</sup> MICH-CARE Compliance Comments at 7. MICH-CARE requests that Midwest ISO provide a termination date for grandfathered agreements (i.e., the associated MWh that will be excluded from cost recovery for MVPs). *See* MICH-CARE Compliance Comments at n.7.

<sup>705</sup> Filing Parties Compliance Answer at 14.

volumes are treated between pricing zones that have such resources from those that do not.<sup>706</sup>

376. Moreover, Filing Parties argue that MICH-CARE's contention that the allocation of 100 percent of MVP costs to MWh will result in a subsidy from Michigan ratepayers is not unique to the portfolio approach and applies broadly to the MVP usage rate. Filing Parties claim that such criticisms are outside of the scope of this compliance proceeding because MICH-CARE seeks to challenge the Commission's acceptance of the MVP usage charge rather than comment on the compliance filing at issue in the instant proceeding.<sup>707</sup>

### **3. Commission Determination**

377. We accept Filing Parties' offer to incorporate the changes suggested by Wisconsin Electric to clarify the language regarding what is to be included and excluded from the MVP usage rate. Filing Parties should submit these changes in a compliance filing due within 30 days of the date of this order.

378. We also accept Filing Parties' explanation regarding why the proposed definition of Monthly Net Actual Energy Withdrawal does not result in double netting. Filing Parties properly understood the Commission's concern and have explained that netting will only occur where appropriate, so as to avoid allocating MVP charges for energy that is not consumed in load zones that contain Demand Response Resources or Emergency Demand Response resources. For this reason, we also reject MICH-CARE's assertion that Filing Parties' approach will result in Metered Volumes from zones with Demand Response Resources or Emergency Demand Response resources being treated differently from zones without such resources. The Metered Volume used in calculating Actual Energy Withdrawals is that of a Commercial Pricing Node, not a zone. For a load asset in the Midwest ISO energy market, the Metered Volume used for settlement is equal to actual metered withdrawals increased by the amount of associated demand response asset net energy injection.<sup>708</sup> Metered Volumes for load assets not associated with Demand Response Resources or Emergency Demand Response resources are not treated in this

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<sup>706</sup> Filing Parties Compliance Answer at 8.

<sup>707</sup> Filing Parties Compliance Answer at 8.

<sup>708</sup> Midwest ISO, Market Settlements Business Practices Manual, Manual No. 005, at 80-81 (Apr. 1, 2011), *available at* <https://www.midwestiso.org/Library/BusinessPracticesManuals/Pages/BusinessPracticesManuals.aspx>.

manner. Accordingly, we agree with Filing Parties that subtracting Actual Energy Injections from Metered Volume at a Commercial Pricing Node appropriately ensures that Net Actual Energy Withdrawals represent only energy actually consumed. Finally, we also find that MICH-CARE's subsidy argument is beyond the scope of the compliance proceeding.

## **F. Other Issues**

### **1. Comments**

379. MICH-CARE states that the Midwest ISO Tariff includes language that excludes high voltage direct current facilities from the definition of "Network Upgrades," and argues that if it was the Commission's intention that they be included as Network Upgrades in MVP portfolios, then the Commission should direct Filing Parties to make this clarification.<sup>709</sup>

380. MICH-CARE also expresses concern that the Midwest ISO Tariff includes language that provides 24 months for audit rights of network upgrade projects. MICH-CARE requests that if projects are to be considered together through the Commission's portfolio approach that the audit period should be extended to 36 months since MVP portfolios may be significantly more complex to audit than regular network upgrades.<sup>710</sup>

381. MICH-CARE requests that these clarifications be accomplished through additional compliance requirements, an evidentiary hearing, or a technical conference. Therefore, MICH-CARE requests that the Commission investigate the interaction of the MVP portfolio approach Tariff language under section 206. Finally, MICH-CARE requests that the Commission suspend Midwest ISO's authority to collect MVP costs pending the outcome of this compliance proceeding.<sup>711</sup>

### **2. Filing Parties' Answer**

382. Filing Parties state that MICH-CARE's procedural requests should have been made in a timely rehearing request and have no place in the instant compliance filing proceeding.<sup>712</sup> Filing Parties argue that these requests do not involve Filing Parties'

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<sup>709</sup> MICH-CARE Compliance Comments at 8.

<sup>710</sup> MICH-CARE Compliance Comments at 8.

<sup>711</sup> MICH-CARE Compliance Comments at 10.

<sup>712</sup> Filing Parties Compliance Answer at 8.

demonstration as to whether Filing Parties complied with the MVP Order or not. Likewise, Filing Parties state that MICH-CARE's requests that the Commission suspend Midwest ISO's authority to collect MVP costs pending the outcome of this compliance proceeding amounts to nothing more than a request for a stay of implementation of the MVP Order, which pertains to the pending rehearing, and therefore should not be entertained here.<sup>713</sup>

### **3. Commission Determination**

383. We do not believe that the treatment of high voltage direct current lines is subject to misinterpretation: the MVP Proposal provides that any direct current transmission line whose schedule and dispatch and/or real-time control is not turned over to Midwest ISO or that requires specific users to subscribe for direct current transmission service is ineligible to be considered an MVP.<sup>714</sup> We are not persuaded that the fact that Midwest ISO assembles MVPs into a portfolio suggests that additional direct current transmission lines (e.g., lines that are not controlled by Midwest ISO) should be eligible for MVP treatment. We also find that MVPs do not need additional time for audits, nor that any type of hearing, technical conference, or section 206 proceeding is required, as stated by MICH-CARE. We agree with Filing Parties that MICH-CARE is effectively seeking to stay the implementation of the MVP Order and, therefore, we will not entertain those requests here.

#### The Commission orders:

(A) The requests for rehearing and clarification are hereby granted in part and denied in part, as discussed in the body of this order.

(B) Filing Parties' compliance filing is hereby accepted, as discussed in the body of this order.

(C) Filing Parties are hereby directed to submit a compliance filing, due within 30 days from the date of this order, as discussed in the body of this order.

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<sup>713</sup> Filing Parties Compliance Answer at 9.

<sup>714</sup> Filing Parties July 15, 2010 Filing, Tab C, Midwest ISO, FERC Electric Tariff, Fourth Revised Vol. No. 1, Original Sheet No. 3451A, First Revised Sheet No. 3451.

(D) Filing Parties are hereby directed to submit a compliance filing, due within 180 days from the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Spitzer is not participating.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

**APPENDIX**Requests for Rehearing of the MVP Order

American Municipal Power, Inc. (AMP)  
American Wind Energy Association and Wind on the Wires (AWEA-WOW)  
Duke Energy Ohio, Inc. and Duke Energy Kentucky, Inc. (Duke)  
E.ON Climate & Renewables North America, LLC (E.ON)<sup>715</sup>  
Exelon Corporation (Exelon)  
FirstEnergy Service Company (FirstEnergy)  
Hoosier Energy Rural Electric Cooperative, Inc. and Southern Illinois Power Cooperative  
(Hoosier-SIPC)  
Iberdrola Renewables, Inc. (Iberdrola)  
Illinois Commerce Commission (Illinois Commission)  
Illinois Municipal Electric Agency (IMEA)  
Industrial Customers<sup>716</sup>  
Indianapolis Power & Light Company (IPL)  
Indicated Midwest ISO Transmission Owners<sup>717</sup>  
Midwest TDUs<sup>718</sup>

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<sup>715</sup> On February 15, 2011, E.ON filed a Notice of Partial Withdrawal of section II.A.5 (at 4) and section III.E (at 30-32) of its Request for Rehearing.

<sup>716</sup> Industrial Customers include: American Forest & Paper Association, Coalition of Midwest Transmission Customers, Minnesota Large Industrial Group, Electricity Consumers Resource Council, Illinois Industrial Energy Consumers, and Wisconsin Industrial Energy Group.

<sup>717</sup> Indicated Midwest ISO Transmission Owners include: Ameren Services Company, as agent for Union Electric Company, Ameren Illinois Company, and Ameren Transmission Company of Illinois (collectively, Certain Ameren Companies); American Transmission Company LLC (ATC); American Transmission Systems, Incorporated (ATSI); City Water, Light & Power (Springfield, IL.); Duke Energy Corporation (Duke Energy) for Duke and Duke Energy Indiana, Inc. (DEI); Great River Energy (Great River); International Transmission Company; ITC Midwest LLC; Michigan Electric Transmission Company, LLC (METC); MidAmerican Energy Company; Minnesota Power (and its subsidiary Superior Water, L&P (Superior Water)); Montana-Dakota Utilities Co. (MDU); Northern Indiana Public Service Company (NIPSCO); Otter Tail Power Company (Otter Tail); Southern Minnesota Municipal Power Agency (SMMPA); and Wolverine Power Supply Cooperative, Inc.

Midwest Independent Transmission System Operator, Inc. (Midwest ISO)  
MISO Northeast Transmission Customers<sup>719</sup>  
Midwest ISO Transmission Owners<sup>720</sup>  
Michigan Public Service Commission (Michigan Commission)  
Organization of MISO States (OMS)<sup>721</sup>  
Renewable Energy Systems Americas Inc. (RES Americas)  
Wisconsin Commission

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<sup>718</sup> Midwest TDUs include: Madison Gas & Electric Company, Missouri Joint Municipal Electric Utility Commission, Midwest Municipal Transmission Group, Missouri River Energy Services (Missouri River), Prairie Power, Inc., and WPPI Energy.

<sup>719</sup> MISO Northeast Transmission Customers include: Consumers Energy Company (Consumers Energy), Michigan Attorney General Bill Schuette, Association of Businesses Advocating Tariff Equity, The Detroit Edison Company, Michigan Municipal Electric Association and Michigan Public Power Agency.

<sup>720</sup> For the purposes of this filing, Midwest ISO Transmission Owners include: Certain Ameren Companies; ATC; Dairyland Power Cooperative; Great River; Minnesota Power (and its subsidiary Superior Water); MDU; NIPSCO; Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin); Northwestern Wisconsin Electric Company; Otter Tail; Southern Indiana Gas & Electric Company (Vectren South); and SMMPA.

<sup>721</sup> The following OMS members generally support the request for rehearing, except where noted: Illinois Commission, Indiana Utility Regulatory Commission (Indiana Commission), Iowa Utilities Board, Michigan Commission, Minnesota Public Utilities Commission, Missouri Public Service Commission, Montana Public Service Commission, North Dakota Public Service Commission (North Dakota Commission), South Dakota Public Utilities Commission (South Dakota Commission), and Public Service Commission of Wisconsin (Wisconsin Commission). Kentucky Public Service Commission (Kentucky Commission) concurs with the request for rehearing, except where noted. Two associate OMS members, Iowa Consumer Advocate and Minnesota Office of Energy Security, generally support the request for rehearing. Public Utilities Commission of Ohio abstained from voting on the request for rehearing. Manitoba Public Utilities Board and Pennsylvania Public Utility Commission did not participate in the request for rehearing.



Answers

Hoosier-SIPC (February 2, 2011)  
PSEG Companies<sup>722</sup> (February 2, 2011)  
Michigan Citizens Against Rate Excess (MICH-CARE) (February 4, 2011)  
PJM Interconnection, LLC (PJM) (February 4, 2011)  
Midwest ISO Transmission Owners (February 8, 2011)<sup>723</sup>  
AMP (February 11, 2011)  
Industrial Customers (February 22, 2011)  
Midwest ISO Transmission Owners (February 22, 2011)<sup>724</sup>

Motions

Midwest TDUs<sup>725</sup> (filed March 4, 2011)  
Hoosier-SIPC (filed June 10, 2011)<sup>726</sup>  
Midwest ISO (filed July 19, 2011)<sup>727</sup>  
Hoosier-SIPC (filed August 3, 2011)<sup>728</sup>

Comments

Letter from Michigan Chamber of Commerce (filed May 10, 2011)  
MICH-CARE (filed July 6, 2011)<sup>729</sup>

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<sup>722</sup> PSEG Companies include: Public Service Electric and Gas Company; PSEG Power LLC; and PSEG Energy Resources & Trade LLC.

<sup>723</sup> For the purposes of this answer, Midwest ISO Transmission Owners do not include Vectren South.

<sup>724</sup> For the purposes of this answer, Midwest ISO Transmission Owners also include Duke Energy for Duke and DEI.

<sup>725</sup> Midwest TDUs filed a Motion to Take Notice of Relevant New Precedent.

<sup>726</sup> Hoosier-SIPC filed a Motion to Lodge.

<sup>727</sup> Midwest ISO filed a motion to strike, or alternatively to answer, Hoosier-SIPC's motion to lodge.

<sup>728</sup> Hoosier-SIPC filed an answer to Midwest ISO's July 19, 2011 motion and answer.

Other Comments Placed in the Public File for this Docket

Letter from Sen. Bob Corker, et al. (filed Feb. 23, 2011)<sup>730</sup>

Letter from Governor Rick Snyder, State of Michigan (Governor Snyder) (filed May 9, 2011)<sup>731</sup>

Letter from Cong. Tim Walberg, et al. (filed June 20, 2011)<sup>732</sup>

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<sup>729</sup> MICH-CARE filed Comments in Limited Support of the Motion to Lodge filed by Hoosier-SIPC.

<sup>730</sup> The Chairman of the Commission responded by letters dated March 14, 2011.

<sup>731</sup> The Chairman of the Commission responded by letter dated May 20, 2011.

<sup>732</sup> The Chairman of the Commission responded by letters dated July 5, 2011