UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Tilton Energy LLC ) Docket Nos. EL16-108-000 )

v. )

Midcontinent Independent )
System Operator, Inc. )

American Municipal Power, Inc. ) EL17-29-000 )

v. )

Midcontinent Independent )
System Operator, Inc. )

Northern Illinois Municipal Power Agency ) EL17-31-000 )

v. )

PJM Interconnection, L.L.C. )

American Municipal Power, Inc. ) EL17-37-000 )

v. )

PJM Interconnection, L.L.C. )

Dynegy Marketing and Trade, LLC ) EL17-54-000 )
Illinois Power Marketing Company )

v. )

Midcontinent Independent ) (consolidated)
System Operator, Inc. )

MOTION FOR LEAVE TO ANSWER AND
ANSWER OF PJM INTERCONNECTION, L.L.C.
PJM Interconnection, L.L.C. (“PJM”), hereby answers the Illinois Municipal Electric Agency’s (“IMEA”) request for clarification or rehearing\(^1\) of the Commission’s May 16, 2019 orders in this proceeding.\(^2\) Those orders granted in part and denied in part several complaints alleging that each complainant was separately assessed transmission congestion charges by both PJM and the Midcontinent Independent System Operator, Inc. (“MISO”) for the same congestion. Through its request, IMEA attempts to advance the unfounded claim that it is entitled to similar relief from any duplicative congestion charges it may have paid in past periods to PJM and MISO, even though it never filed a section 206 complaint alleging or challenging any such charges. As shown in this answer, the Commission should deny IMEA’s request for clarification or rehearing.

I. MOTION FOR LEAVE TO ANSWER

The Commission’s rules provide that a party may answer requests for rehearing where the decisional authority permits the answer for good cause shown.\(^3\) In this case, PJM respectfully requests that the Commission grant PJM’s Motion for Leave to Answer

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\(^3\) See, e.g., Nat’l Fuel Gas Supply Corp., 164 FERC ¶ 61,084, at P 9 (2018) (finding good cause to waive Rule 213(a)(2) and accepting an answer to a rehearing request because the answer assisted the Commission in its decision-making process); Algonquin Gas Transmission, LLC, 154 FERC ¶ 61,048, at P 2 n.6 (2016) (accepting answer to rehearing request because it assisted in the Commission’s decision-making process).
because the answer will help clarify the record and assist in the Commission’s decision-making process.

II. ANSWER

A. Background

The May 16 Orders find and hold that the challenged charges assessed by PJM were in accord with its tariff. The May 16 Orders likewise find and hold that the challenged charges assessed by MISO were in accord with its tariff. The Commission found unjust and unreasonable only the scenario where PJM applying its lawful tariff, and MISO applying its lawful tariff, charge a Complainant for the same congestion. Specifically, the Commission found that “to the extent the Complainants were assessed overlapping or duplicative congestion charges by the RTOs, such charges were unjust and unreasonable.” The Commission therefore set for hearing only “what refunds are appropriate to Complainants to remedy the overlapping or duplicative congestion charges;” i.e., “the extent to which the MISO/PJM Complainants in the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds.”

Although the MISO/PJM Pseudo-Tie Congestion Complaints have all been pending for over two years, IMEA never filed a similar complaint. Now, however, on

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4 See AMP-NIMPA Order at PP 46-49; AMP Order at PP 78-82.
5 See Dynegy Order at P 57; AMP Order at P 78; Tilton Order at P 69.
6 AMP-NIMPA Order at P 52 (emphasis added).
7 Id. at P 53 (emphasis added).
rehearing of the orders substantially resolving all five complaints, IMEA demands that it be treated as if it filed a similar complaint.\(^8\) Indeed, IMEA asserts it should be treated as if it had filed concurrently with the earliest of the five complaints, and thus afforded the same refund effective date established by the Tilton Complaint.\(^9\) IMEA offers no explanation for why it did not file its own complaint. Instead, it argues that it should be treated as if it was in the same “class” with the Complainants, and provided refunds on the same terms as are determined for the Complainants.\(^10\)

Specifically, IMEA asks the Commission to amend each of the May 16 Orders to replace multiple instances of the word “Complainant” with the words “affected customer” in each order’s discussion of duplicative congestion charges and the need to determine refunds.\(^11\)

**B. The Commission Should Deny IMEA’s Request for Clarification and Rehearing**

At the outset, IMEA’s request seeks not a clarification, but rather a major amendment, of the May 16 Orders. The May 16 Orders repeatedly refer to the “Complainants” plainly because they are only granting relief (or establishing procedures for the determination of relief) as to the Complainants.\(^12\) Reinforcing this, the May 16 Orders define the scope of the refund inquiry as “the extent to which the Complainants in

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\(^8\) IMEA Request at 9.

\(^9\) *Id.* at 12.

\(^10\) *Id.* at 9, 12.

\(^11\) *Id.* at 8.

\(^12\) See, e.g., Tilton Order at P 85.
the MISO/PJM Pseudo-Tie Congestion Complaints may have been subject to overlapping or duplicative congestion charges and are due refunds." The scope of the inquiry is thus not only limited to the individual entities named as Complainants, but also is limited by their specific complaints that they filed in these now-consolidated dockets. Consistent with that, and with the requirements of the Federal Power Act ("FPA"), the Commission established a distinct refund effective date for each of the complaints. The Commission’s careful delineation of the scope of the possible refund determinations for each complaint was not an oversight; rather, it was an application of the requirements of FPA section 206. The Commission therefore should deny IMEA’s request that it clarify that it really meant to direct refunds for parties like IMEA that did not file a complaint.

The Commission also should deny IMEA’s alternative request for rehearing. Put simply, IMEA is asking the Commission to relieve IMEA from application of PJM’s (or MISO’s) filed rate lawfully in effect on and after the August 25, 2016 refund effective date established for the Tilton complaint. IMEA has no right to such a retroactive departure from the filed rate, where it did not file an FPA section 206 complaint at that time seeking relief from such filed rates. IMEA’s request ignores the long-standing, well-established strictures on when and how filed rates can be changed under the FPA.

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13 Id. (emphasis added).

14 See Dynegy Order at P 70; AMP-NIMPA Order at P 55; AMP Order at P 97; Tilton Order at P 87.

IMEA argues it is entitled to the same relief as Tilton and the other Complainants, beginning on the refund effective date for the Tilton complaint, because it is in the same “class” as the Complainants. That is incorrect. The precedents IMEA cites involve Commission-directed changes to the tariff rates for service to any customer in a defined service class or a Commission determination that all customers were due refunds if they were assessed charges that departed from the utility’s then-effective filed tariff. Those precedents are comparable to the Commission ordering changes to PJM’s market rules under FPA section 206, in which the filed rules are changed for every market participant selling or buying the affected service or product.

Here, however, the Commission expressly held that PJM’s transmission congestion charges to pseudo-tied resources conformed to PJM’s just and reasonable then-effective tariff rules. The Commission did not find that PJM’s tariff was unjust and unreasonable, nor did it find that PJM’s congestion charges departed from the requirements of the filed

(finding “the right to a reasonable rate is the right to the rate which the Commission files or fixes”).

16 IMEA Request at 9, 12.


18 See City of Holland v. Midwest Indep. Transmission Sys. Operator, Inc., 112 FERC ¶ 61,105 (2005) (finding “it would be inequitable to require Midwest ISO to provide a remedy to only four of its customers, when potentially many other customers were also impacted by its violation of the filed rate doctrine”).

19 AMP-NIMPA Order at P 46.
tariff. Rather, the May 16 Orders target only instances where PJM applies its lawful effective tariff rules on congestion, and MISO applies its lawful effective tariff rules on congestion, with the result that they both charge the same customer for the same congestion. That scenario, however, is by its nature customer-specific. Whether a customer is assessed duplicative congestion charges by MISO and PJM depends on that customer’s charges from PJM and that customer’s separate charges from MISO. Consequently, there is no service “class” involved in determining to what extent each Complainant may have been charged separately by both PJM and MISO for the same congestion, and so there are no class rules that can be changed retroactively to also benefit IMEA.
III. CONCLUSION

Based on the foregoing, the Commission should deny IMEA’s request for clarification or rehearing.

Respectfully submitted,

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July 2, 2019
CERTIFICATE OF SERVICE

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

Dated at Washington, D.C., this 2nd day of July 2019.

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